

INDIAN ELECTIONS AND FRANCHISE

BY

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MYLAPORE, MADRAS

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[Rs. 3

PREFACE

IN the following pages an attempt has been made to present in a concise, analytical and a readable form the Indian Franchise Rights, Electoral Law and Procedure introduced into India after the Government of India Act, 1935. The new Indian Legislatures, the modes of representation to them and the extension of Electoral Rights of Indian citizens introduced under the complicated machinery which the Government of India Act, 1935, has necessitated the issue of a book, which would enable every politically conscious citizen, male or female, to know his or her own rights both as a voter or as a candidate to one or other of the Indian Legislatures. A detailed survey of the electoral rules and regulations of all the eleven provinces in India would surely be of no avail without giving, at the first instance, a clear idea as to the ground work of the constitution and of the various constituencies formed throughout India for purposes of elections to Indian Legislatures.

Although the Federal Legislature has not been introduced as yet, an attempt has been made, to deal with its proposed constitution and composition, so that as and when it is introduced into India, electoral rights under it may be more readily understood and appreciated. In fact Indian citizens have already become accustomed to elections under the Government of India Act, 1919, so that when the Federal Legislature is introduced, it would merely be a step further to follow up or

extend the principles embodied in this book in connection with elections to it.

Under the Government of India Act, 1935, various forms of electoral procedure have been introduced by the Local Governments which have been separately summarized after dealing with the general practice and procedure in elections in vogue in all provinces. Every effort has been made to digest and incorporate the special rules framed by various Local Governments in a clear cut and an analytical form, so as to make the same a practical exposition of the law and procedure governing elections in India. All interesting election features pertaining to elections to reserved and special seats have been exhaustively dealt with and it is confidently hoped that the book will be of special use.

Whereas each province is concerned primarily with its own electoral rules, it might indeed seem a redundancy to people in one province to be given information as regards the electoral rules and franchise rights in other provinces. In that case a smaller book dealing with its own electoral rules and franchise rights would have been quite sufficient. But even so, as the new Parliaments of India are coming to be elected, it appeared to be necessary to include much of the information pertaining to all provinces in a brief manner.

Portions of this book had to be written out hurriedly bearing in mind that a book of this kind, if not available on the eve of elections, would not serve the purpose it is intended to serve, viz., to introduce the elector and the candidates and others to elections to new legislatures. Nobody is more conscious than the author,

of certain unavoidable shortcomings traceable to this reason, which he hopes to set right in future.

It has of course been impossible to include within the assigned limits of space all information pertaining to all provinces touching the electoral procedure especially where it should be noted that the regulations made by the Local Governments are not uniform. Under these circumstances, it would be desirable for candidates, voters, election agents in charge of elections to obtain the special rules and regulations issued by Local Governments with which they are concerned. With the advent of democratic institutions and their working for some years by now it seemed as though the reader should be spared lengthy quotations from English authors.

The author would gratefully welcome any suggestions from officers concerned with elections, candidates, voters and other politically minded citizens as to making the book more useful to themselves. For the collection of the English cases cited in this book, the author gratefully acknowledges indebtedness to that standard and exhaustive book "Penal Law of British India" by Dr. Sir Hari Singh Gour, M.A., D.Litt., D.C.L., LL.D., which is of the highest authority and from which he has drawn abundantly.

The author acknowledges gratefully the assistance he has derived from Ratanlal's Law of Crimes and he has freely availed himself of all the materials furnished by the rules, regulations, etc., issued by the Government of India and the various Local Governments and the author's grateful acknowledgments are due to them. A

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personal word of thanks is due to Mr. A. A. Chitre, M.A., LL.B., Chief Judge of Small Causes Court, Bombay for very useful and valuable suggestions made by him in the preparation of this work. The author's thanks are also due to all his friends at the bar and to Mr. Indranarayan Brijmohanlal, M.A., LL.B., Acting Chief Judge of Small Causes, for the kind encouragement accorded by them whenever he had the privilege to discuss matters embodied in the book with them.

The author is particularly obliged to Mr. S. V. Swamy, Manager of the 'Indian Express,' Mr. V. Kuppuswamy Iyer of the Alliance Company, Mylapore and Messrs. The Huxley Press, Madras, but for whose prompt and timely handling of the manuscripts and proofs this book would not have seen the light of day.

Bombay,
28—1—1937.

N. C. N. A.

CONTENTS

CHAP.	PAGE
I. COMPOSITION AND CONSTITUTION OF LEGISLATURES IN INDIA	1
II. REGISTRATION OF VOTERS IN INDIA ..	16
III. GENERAL QUALIFICATIONS AND DISQUALIFICATIONS FOR MEMBERSHIP TO LEGISLATURES IN INDIA	46
IV. MEMBERS OF THE PROVINCIAL LEGISLATURES.	65
V. PRACTICE AND PROCEDURE AT ELECTIONS ..	69
VI. INDIAN CASE LAW ON ELECTIONS ..	159
VII. FRANCHISE QUALIFICATIONS FOR ELECTORS FOR PROVINCIAL LEGISLATURES ..	188
VIII. ELECTION OFFENCES, INQUIRIES AND PENALTIES	269
IX. ELECTORAL RIGHTS OF JOINT HINDU FAMILIES AND JOINT PROPERTY HOLDERS ..	309
X. FORM OF OATH OR AFFIRMATION OF ELECTED MEMBERS	311
XI. FORMS PRESCRIBED FOR NOMINATION AND FOR VOTING	312

AN APPRECIATION

*Hon'ble Rai Bahadur Sir K. V. REDDI NAIDU GARU,
K.C.I.E.—*

I find the “Indian Elections and Franchise” by Mr. N. C. N. Acharya very well written indeed. It ought to be of immense help, especially at this time, to those who are seeking elections.

INDIAN ELECTIONS AND FRANCHISE

CHAPTER I

Composition and Constitution of Legislatures in India (Central)

CONSTITUTION OF THE FEDERAL LEGISLATURE : TWO HOUSES

There are two houses of the Federal Legislature known as (1) Council of State and (2) the House of Assembly or the Federal Assembly. The Council of State will consist of 156 representatives of British India and not more than 104 representatives of the Indian States. The Federal Assembly will consist of 250 representatives of British India and not more than 125 representatives of the Indian States.

COUNCIL OF STATE : A PERMANENT BODY

The Council of State is a permanent body not subject to dissolution, but as near as may be one-third of the members thereof will retire in every third year in accordance with the provisions contained in First Schedule of the Government of India Act, 1935.

DURATION OF FEDERAL ASSEMBLY

The Federal Assembly unless sooner dissolved, will continue for *five* years from the date appointed for their first meeting and no longer and the expiration of the said period of five years will operate as a dissolution of the Assembly.¹

The representatives will be chosen in accordance with the provisions in that behalf contained in the First Schedule to the Government of India Act.

VOTING IN CHAMBERS

All the questions at any sitting or joint sitting of the Chambers will be determined by a majority of votes of the members present and voting, other than the president or speaker or the person acting as such.²

COMPOSITION OF 'THE COUNCIL OF STATE'

This is to contain 156 members representing British India of whom 150 will be allocated to the Governors' Provinces, the Chief Commissioners' Provinces and the Anglo Indian, European and Indian Christian communities more fully described below and the remaining 6 seats will be filled by persons chosen by the Governor-General at his discretion.

Madras Province is assigned 20 seats of which 14 are general seats, 1 for the Scheduled castes, 4 for the Muhammadans and 1 for women.

¹ Sec. 18, the Government of India Act, 1935.

² Sec. 23, " " "

Bombay has 16 seats of which 10 are general seats, 1 for the Scheduled castes, 4 for the Muhammadans and 1 for women.

Bengal has 20 seats of which there are 8 general seats, 1 for the Scheduled castes, 10 for the Muhammadans and 1 for the women.

United Provinces has 20 seats of which 11 are general seats, 1 for the Scheduled castes, 7 for the Muhammadans and 1 for the women.

Punjab.—The Punjab has 16 seats of which 3 are general seats, 4 Sikh seats, 8 Muhammadan seats and 1 seat for the women.

Bihar.—Bihar has 16 seats of which 10 are general seats, 1 for the Scheduled castes, 4 Muhammadan seats and 1 for the women.

Central Provinces and Berar are allotted 8 seats of which 6 are general seats, 1 for the Scheduled castes, and 1 for the Muhammadans.

Assam has 5 seats of which 3 are general seats and 2 for the Muhammadans.

North-West Frontier Province has 5 seats of which 1 is a general seat and 4 for the Muhammadans.

Orissa has 5 seats of which 4 are general seats and 1 for the Muhammadans.

Sind has 5 seats of which 2 are general seats and 3 for the Muhammadans.

Besides the above *British Baluchistan* has 1 Muhammadan seat, *Delhi* has 1 general seat, *Ajmir Merwara* has 1 general seat, *Coorg* has 1 general seat, *Anglo Indians* have 1 seat, *Europeans* have 7 and *Indian Christians* have 2.

COMPOSITION OF THE FEDERAL ASSEMBLY

The Federal Assembly is to contain 250 members. Each Province is allotted certain number of seats which are distributed as follows :—

Distribution of seats for the Madras Province.—Of the total of 37 seats allotted to the Madras Province, 19 are general seats of which 4 are reserved for the Scheduled castes, 8 seats for the Muhammadans, 1 for the Anglo Indians, 1 for the Europeans, 2 for the Indian Christians, 2 for the representatives of commerce and industry, 1 for the landholders, 1 seat for representatives of labour and 2 women's seats.

Distribution of seats for Bombay.—Of the total of 30 seats allotted to the Bombay Province, there are 13 general seats, of which 2 are reserved for the Scheduled castes, 6 for the Muhammadans, 1 for the Anglo Indians, 1 for the Europeans, 1 for the Indian Christians, 3 for the representatives of commerce and industry, 1 for the landholders, 2 for the representatives of labour and 2 women's seats.

Distribution of seats for Bengal.—Of the total of 37 seats allotted to the Bengal Province there are 10 general seats of which 3 are reserved for the Scheduled castes, 17 Muhammadan seats, 1 for the Anglo Indians, 1 for the Europeans, 1 for the Indian Christians, 3 for the representatives of commerce and industry, 1 for the landholders, 2 for the representatives of labour and 1 seat for women.

Distribution of seats for United Provinces.—Of the 37 seats allotted to the U. P. Province there are 19 general seats of which 3 are reserved for the Scheduled castes, 12 Muhammadan seats, 1 for the Anglo Indians,

1 European seat, 1 for the Indian Christians, 1 for the landholders, 1 for the representatives of labour and 1 for the women.

Distribution of seats for the Punjab.—Of the 30 total seats allotted to the Punjab there are 6 general seats of which 1 seat is reserved for the Scheduled castes, 6 for the Sikhs, 14 for the Muhammadans, 1 for the Europeans, 1 for the Indian Christians, 1 for the landholders and 1 for the women.

Distribution of seats for Bihar.—Of the 30 seats allotted to the Bihar Province, 16 are general seats, of which 2 are reserved for the Scheduled castes, 9 Muhammadan seats, 1 for the Europeans, 1 for the Indian Christians, 1 for the landholders, 1 for the representatives of labour and 1 for the women.

Distribution of seats for Central Provinces and Berar.—Of the total of 15 seats allotted to Central Provinces and Berar, 9 are general seats of which 2 are reserved for the Scheduled castes, 3 for the Muhammadans, 1 for the landholders, 1 for the representatives of labour and 1 for the women.

Distribution of seats for the North-West Frontier Province.—Out of the total of 5 seats allotted, there is one general seat and 4 seats for the Muhammadans.

For Orissa.—Out of the total of 5 seats allotted to the Orissa Province 4 are general seats of which 1 is reserved for the Scheduled castes, and 1 is a Muhammadan seat.

For Sind.—Out of the total of 5 seats allotted for Sind, 1 is a general seat, 3 for the Muhammadans and 1 for the Europeans.

For British Baluchistan.—There is 1 seat which is a Muhammadan seat.

For Delhi.—Out of two seats allotted 1 is a general seat and 1 for the Muhammadans.

For Ajmir Merwara.—There is only one general seat for Ajmir Merwara.

For Coorg.—There is 1 general seat for Coorg.

Non-provincial seats.—Besides the above, there are 4 non-provincial seats of which there are 3 seats for representatives of commerce and industry and 1 seat for representatives of labour.

Indian States' Representatives in Indian Legislatures **Representatives of Indian States in the** **Federal Legislature**

COUNCIL OF STATE

In the Council of State, to each state or group of states will be assigned certain seats. In the case of the Federal Assembly too, each state or group of states will be assigned certain seats.

Seats for States in the Council of State.—Each state or group of states is assigned the number of seats mentioned after it. Hyderabad 5, Mysore 3, Kashmir 3, Gwalior 3, Baroda 3, Kalat 2, Sikkim 1, Rampur 1, Benares 1, Travancore 2, Cochin 2, Pudukkotai, Banganapalle, Sandur 1, Udaipur 2, Jaipur 2, Jodhpur 2, Bikanir 2, Alwar 1, Kotah 1, Bharatpur 1, Tonk 1, Dholpur 1, Karauli 1, Bundi 1, Sirohi 1, Dungarpur 1, Banswara 1, Partabgarh and Jhalawar 1, Jaisalmer and Kishengarh 1, Indore 2, Bhopal 2, Rewa 2, Datia 1, Orchha 1, Dhar 1, Dewas Senior and Junior 1, Joara and

Ratlam 1, Panna Samthar, Ajaigarh 1, Bijawar Char-
khari and Chhatrapur 1, Baoni, Nagod, Manihar and
Baraundha 1, Barwani, Alirajpur, Shahpura 1, Jhabua,
Sailana and Sitamau 1, Rajgarh, Narsingar and Khilchi-
pur 1, Cutch 1, Idar 1, Nawanagar 1, Bhawanagar 1,
Junagadh 1, Rajpipla, Palanpur 1, Dharangadhara and
Gondal 1, Porbandar and Morvi 1, Radhanpur, Wan-
kaner and Palitana 1, Cambay Dharampur and Bala-
sinor 1, Baria, Chota Udaipur, Sant and Lunawada 1,
Bansda, Sachin, Jawhar and Danta 1, Dhrol, Limbodi,
Wadhwan and Rajkot 1, Kolhapur 2, Sangli, Savant-
vadi 1, Janjira, Mudhol and Bhore 1, Jamkhandi, Miraj
(Senior and Junior), Kurudwad (Senior and Junior) 1,
Akalkot, Phaltan, Jath, Aundh and Ramdurg 1,
Patiala 2, Bahawalpur 2, Khairpur 1, Kapurthala 1,
Jind 1, Nabha 1, Mandi, Bilaspur, Suket 1, Tehri Garh-
wal, Srimur, Chamba 1, Faridkot, Malerkotla and
Loharu 1, Cooch Behar 1, Tripura and Manipur 1,
Mayurbhanj and Sonepur 1, Patna and Kalahandi 1,
Keonjhar, Dhenkanal, Nayagarh, Talcher and Nilgiri 1,
Gangpur, Bamra, Seraikela, Boud, Bonai 1, Bastar, Sur-
guja, Raigarh and Nandgaon 1, Kairagarh, Jashpur, Kan-
ker, Korea, Sarangarh 1. States which on the 1st day
of January 1935 were included in the Western India
States' Agency, the Gujarat States' Agency, the Deccan
States' Agency, the Eastern States' Agency, the Central
Indian Agency, or the Rajputana Agency or were in
political relations with the Government of the Punjab or
the Government of Assam as may be enumerated in
rules made by the Governor-General in his discretion—
2 seats.

REPRESENTATIVES OF INDIAN STATES IN THE
FEDERAL ASSEMBLY

The following seats are assigned to the Federal Assembly to the Indian States. Each State is assigned the number of seats given after it. Hyderabad 16, Mysore 7, Kashmir 4, Gwalior 4, Baroda 3, Kalat 1, Sikkim (nil), Rampur 1, Benares 1, Travancore 5, Cochin 1, Pudukkotai, Banganapalle and Sandur 1, Udaipur 2, Jaipur 3, Jodhpur 2, Bikanir 1, Alwar 1, Kotah 1, Bharatpur 1, Tonk 1, Dholpur and Karauli 1, Bundi and Sirohi 1, Dungarpur and Banswara 1, Partabgarh and Jhalawar 1, Jaisalmer and Kishengarh 1, Indore 2, Bhopal 1, Rewa 2, Datia and Orchha 1, Dhar Dewas (Senior & Junior) 1, Jaora, Ratlam 1, Panna, Samthar and Ajaigarh 1, Bijawar, Charkhari and Chhatarpur 1, Baoni, Nagod, Maihar and Baraundha 1, Barwani, Alirajpur and Shahpura 1, Jhabua, Sailana and Sitamau 1, Rajgarh, Narsingarh and Khilchipur 1, Cutch 1, Idar 1, Nawanagar 1, Bhawanagar 1, Junagadh 1, Rajpipla and Palanpur 1, Dhrangadhara and Gondal 1, Porbandar and Morvi 1, Radhanpur, Wankaner and Palitana 1, Cambay, Dharampur and Balasinor 1, Baria, Chhota Udaipur, Sant and Lunawada 1, Bansda, Sachin, Jawhar, Danta, Dhrol, Limbdi, Wadhwan and Rajkot 1, Kolhapur 1, Sangli, Savantvadi 1, Janjira, Mudhol Bhore 1, Jamkhandi, Miraj (Senior and Junior) and Kurundwad (Senior and Junior) 1, Akalkot, Phaltal, Jath, Aundh, Ramdurg 1, Patiala 2, Bahawalpur 1, Khairpur 1, Kapurthala 1, Jind 1, Nabha 1, Tehri Garhwal 1, Mandi, Bilaspur and Suket 1, Sirmur and Chamba 1, Faridkot, Malerkotla and Loharu 1, Cooch Behar 1, Tripura 1, Mainpur 1, Mayurbhanj 1, Sonapur 1,

Patna 1, Kalahandi 1, Keonjhar 1, Gangpur 1, Bastar 1, Surguja 1, Dhenkanal, Nayagarh, Seraikela, Baud, Talcher, Bonai, Nilgiri, Bamra 3, Raigarh, Kairagarh, Jashpur, Kankner, Sarangarh, Korea and Nandgaon 3. States which are not mentioned in any of the preceding divisions but which on the 1st day of January 1935 included in the Western India States' Agency, the Gujarat States' Agency, the Deccan States' Agency, the Eastern States' Agency, the Central Indian Agency or the Rajputana Agency or were in political relations with the Government of the Punjab or the Government of Assam as may be enumerated by the Governor-General in his discretion—5 seats.

Composition and Constitution of Legislatures in India (Provincial)

The Governors' Provinces.—Governors' Provinces constituted under the Government of India Act, 1935 are (1) Madras, (2) Bombay, (3) Bengal, (4) the United Provinces, (5) the Punjab, (6) Bihar, (7) the Central Provinces and Berar, (8) Assam, (9) the North-West Frontier Province, (10) Orissa, (11) Sind and such other provinces as may be created under the Government of India Act, 1935. Province means a Governor's Province.¹

Legislatures in Provinces.—There are two chambers in the Provinces of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam. In the other provinces there is only one chamber. Where there are two chambers they are called respectively by the names of

¹ Sec. 46(1), the Government of India Act, 1935.

the Legislative Council and the Legislative Assembly and where there is only one chamber it is known as the Legislative Assembly.¹

Duration of Provincial Legislatures.—Every *Legislative Assembly* of every province unless sooner dissolved will continue for 5 years from the date appointed for their first meeting and no longer, and the expiration of the said period of 5 years will operate as a dissolution of the Assembly.

Every *Legislative Council* will be a permanent body not subject to dissolution but as near as may be one-third of the members thereof will retire in every third year in accordance with the provision in that behalf made in relation to the province under the fifth schedule.²

PROVINCIAL CHAMBERS : LEGISLATIVE ASSEMBLIES

Allocation of seats.—The allocation of seats in the Legislative Assemblies is as follows :—

The Madras Legislative Assembly.—This is to consist of 215 members. Of these there are 146 general seats. Out of 146 general seats, 30 general seats are reserved for the Scheduled castes. The rest of the seats are distributed as follows :—1 seat for representatives of backward areas and tribes, 28 seats for Muhammadans, 2 for Anglo Indians, 3 for Europeans, 8 for Indian Christians, 6 for representatives of commerce, industry, mining and planting, 6 for landholders, 1 for the University, 6 for representatives of labour, 6 general

¹ Sec. 60, the Government of India Act, 1935.

² Sec. 61,

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seats for women, 1 for representatives of Mahomedan women and 1 for representatives of Indian Christian women.

The Bombay Legislative Assembly.—This is to consist of 175 members. Of these 114 are general seats. Out of 114 general seats 15 are reserved for Scheduled castes and 7 for Marathas. The rest of the seats in the Assembly are distributed as follows:—1 for the backward areas and tribes, 29 for Mahomedans, 2 for Anglo Indians, 3 for Europeans, 3 for Indian Christians, 7 for representatives of commerce, industry, mining and planting, 2 for landholders, 1 for the University, 7 for representatives of labour, 5 general seats for women and 1 seat for Mahomedan women.

The Bengal Legislative Assembly.—This is to consist of 250 members. Of these there are 78 general seats. Out of 78 general seats 30 general seats are reserved for the Scheduled castes. The rest of the seats are distributed as follows:—117 for Mahomedans, 3 Anglo Indian seats, 11 European seats, 2 Indian Christian seats, 19 seats for representatives of commerce, industry, mining and planting, 5 seats for landholders, 2 seats to represent the University, 8 seats to represent labour, 2 general seats for women, 2 seats for Mahomedan women and 1 for Anglo Indian women.

The United Provinces Legislative Assembly.—This is to consist of 228 members. Of these 140 are general seats. Out of 140 general seats, 20 general seats are reserved for the Scheduled castes. The rest of the seats are distributed as follows:—64 for Mahomedans, 1 for the Anglo Indians, 2 for the Europeans, 2 for the Indian Christians, 3 for representatives of commerce, industry,

mining and planting, 6 for the landholders, 1 for the University, 3 for the representatives of labour, 4 general seats for women and 2 for the representatives of Mahomedan women.

The Punjab Legislative Assembly.—This is to consist of 175 members. Of these 42 are general seats. Out of 42 general seats 8 are reserved for Scheduled castes. The rest of the seats are distributed as follows :—31 for the Sikhs, 84 for the Muhammadans, 1 for the Anglo Indians, 1 for the Europeans, 2 for the Indian Christians, 1 for the representatives of commerce, industry, mining and planting, 5 for the landholders including 1 seat to be filled by a Tumandar, 1 for the University, 3 for the representatives of labour, 1 general seat for women and 2 seats for Mahomedan women.

The Bihar Legislative Assembly.—This is to consist of 152 members. Of these 86 are general seats. Out of 86 general seats 15 general seats are reserved for the Scheduled castes. The rest of the seats in the Assembly are distributed as follows :—7 seats for the representatives of backward areas and tribes, 39 Muhammadan seats, 1 seat for the Anglo Indians, 2 for the Europeans, 1 for the Indian Christians, 4 for the representatives of commerce, industry, mining and planting, 4 for landholders, 1 for the University, 3 for the representatives of labour, 3 general seats for women and 1 seat for the Muhammadan women.

The Central Provinces and Berar Legislative Assembly.—This is to consist of 112 members. Of these 84 are general seats. Out of 84 general seats 20 general seats are reserved for the Scheduled castes. The rest of the seats are distributed as follows, i.e. :—1 for the representa-

tives of backward areas and tribes, 14 for the Muhammadans, 1 for the Anglo Indians, 1 for the Europeans, 2 for the representatives of commerce, industry, mining and planting, 3 for the landholders, 1 for the University, 2 for the representatives of labour and 3 general seats for women.

The Assam Legislative Assembly.—This is to consist of 108 members. Of these 47 are general seats. Of the 47 general seats, 7 general seats are reserved for the Scheduled castes. The rest of the seats are distributed as follows, i.e. :—9 seats for the representatives of backward areas and tribes, 34 for Muhammadans, 1 for the Europeans, 1 for the Indian Christians, 11 for the representatives of commerce, industry, mining and planting, 4 for the representatives of labour and 1 general seat for women.

The North-West Frontier Province Legislative Assembly.—This is to consist of 50 members. Of these 9 are general seats, 3 are allotted to the Sikhs, 36 for Muhammadans and 2 for the landholders.

The Orissa Legislative Assembly.—This is to consist of 60 members. Of these 44 are general seats. Of the 44 general seats 6 general seats are reserved for the Scheduled castes. The rest of the seats are distributed as follows :—5 for the representatives of backward areas and tribes, 4 for the Muhammadans, 1 for Indian Christians, 1 for the representatives of commerce, industry, mining and planting, 2 for the landholders, 1 for the representatives of labour and 2 general seats for women.

The Sind Legislative Assembly.—This is to consist of 60 members. Of these 18 are general seats. The rest of the seats are distributed as follows, i.e. :—33 for

Muhammadans, 2 for Europeans, 2 for the representatives of commerce, industry, mining and planting, 2 for the landholders, 1 for the representatives of labour, 1 general seat for women and 1 seat for Muhammadan women.

PROVINCIAL LEGISLATIVE COUNCILS : COMPOSITION
AND CONSTITUTION

The composition of each Provincial Legislative Council is specified in Schedule 5 of the Government of India Act.

The Madras Legislative Council.—This is to consist of not more than 56 and not less than 54 seats. Of these, there are 35 general seats, 7 Muhammadan seats, 1 European seat, 3 Indian Christian seats and not more than 10 and not less than 8 seats to be filled in by the Governor.

The Bombay Legislative Council.—This is to consist of not more than 30 and not less than 29 seats of which there are 20 general seats, 5 Muhammadan seats, 1 European seat and not more than 4 and not less than 3 seats to be filled in by the Governor.

The Bengal Legislative Council.—This is to consist of not more than 65 and not less than 63 seats of which there are 10 general seats, 17 Muhammadan seats, 3 European seats, 27 seats to be filled by Legislative Assembly and not less than 6 and not more than 8 seats to be filled by the Governor.

The United Provinces Legislative Council.—This is to consist of not more than 60 and not less than 58 seats of which there are 34 general seats, 17 Muhammadan

seats, 1 European seat, and not less than ⁹and not more than 8 seats to be filled by the Governor.

The Bihar Legislative Council.—This is to consist of not more than 30 and not less than 29 seats of which there are 9 general seats, 4 Muhammadan seats, 1 European seat, and 12 seats to be filled by the Legislative Assembly and not less than 3 and not more than 4 seats to be filled by the Governor.

The Assam Legislative Council.—This is to consist of not more than 22 and not less than 21 seats of which there are 10 general seats, 6 Muhammadan seats, 2 European seats and not less than 3 and not more than 4 seats to be filled by the Governor.

CHAPTER II

Registration of Voters in India

(a) General

The Electoral Roll: How Prepared: No right to vote without being included in an Electoral Roll.—For every territorial constituency there is to be one electoral roll and generally every person whose name is included in the electoral roll is entitled to vote. No person whose name is not included is entitled to vote.¹ The electoral rolls for the territorial constituencies will be made up and they will be from time to time revised by reference to “a prescribed date” as may be directed in each case by the Governor exercising his individual judgment.²

Persons entitled to be included in the Electoral Roll for General Constituency.—In order to entitle a person to be included in the general constituency a person should have (1) attained the age of 21 years, and (2) been a British subject; or (3) been the ruler or a subject of a Federal State; or (4) the ruler or subject of any other state if so prescribed and subject to any prescribed conditions.³

Exception in case of a person of unsound mind.—A person who is of unsound mind and who stands so declared by a competent court cannot be included in the

¹ Para 1, Schedule VI, the Government of India Act, 1935.

2 Para 2,

³ Para 3, " "

electoral roll. Nor can he vote in a territorial constituency.¹

Persons entitled to be included in Sikh, Muhammadan, Anglo Indian, European and Indian Christian Constituencies.—No one who is not a Sikh, a Muhammadan, Anglo Indian, European or an Indian Christian, is entitled to be included in a Sikh, Muhammadan, Anglo Indian, European or an Indian Christian constituency respectively. No person who is entitled to be included in a Sikh, Muhammadan, Anglo Indian, European or an Indian Christian constituency will be included in the electoral roll for a General Constituency in a province.²

But the provisions of this paragraph will not apply in relation to the general seats reserved for women in Assam and Orissa or the constituencies for the elections of persons to fill those seats. The result of this provision is that these classes may participate in elections of women for the general seats of those provinces.

Persons to be included in an Electoral Roll in one Territorial Constituency.—A person can only be included as a rule in one territorial constituency in a province. This is because no person is entitled to vote in more than one territorial constituency in any province at a general election. In each province rules are so framed as to prevent persons being included in the electoral roll for more than one territorial constituency in the province. The only exception recognised is the case in a province where territorial constituencies have been specially formed for the purpose of electing women

¹ Para 4, Schedule VI, the Government of India Act, 1935.

² Paras 5 and 6, Schedule VI, the Government of India Act, 1935.

members. A person in such circumstances can be included in the electoral roll for and vote at a general election in one territorial constituency so formed and also one territorial constituency not so formed.¹

Exclusion of persons guilty of corrupt practices and offences in connection with elections from Electoral Roll.—A person who is guilty of corrupt practices or other offences in connection with elections and disqualified from voting under the provisions of any order in Council Act of Provincial Legislature or rules made by the Governor or may be passed under the Government of India Act will have his name struck off forthwith from all the electoral rolls for territorial constituencies in which he may be included. Such a person is not entitled to vote at any election in a territorial constituency.²

FEMALE FRANCHISE

Women Voters.—Women are in certain cases entitled to be included in the electoral rolls on account of the qualifications of their husbands. A woman enfranchised on account of the qualifications of her husband continues to be included in a territorial constituency notwithstanding the death of her husband. But if she marries or becomes disqualified in any other manner mentioned above then, she cannot be continued to be included in the electoral roll.³

In a province not more than one woman is entitled to appear in the electoral rolls for the territorial consti-

¹ Para 7, Schedule VI, the Government of India Act, 1935.

² Para 8, " " " "

³ Para 10(a), Schedule VI, the Government of India Act, 1935.

tuencies in respect of the qualifications of any particular man.¹

Change of place by a woman.—If a woman on the electoral roll of a territorial constituency on account of the qualifications of her husband as above stated changes her place of residence she may on any subsequent revision of the roll be transferred to such other territorial constituency as may be appropriate.²

Fiduciary ownership of property excluded as regards rights of Franchise.—Any property owned, held or occupied or payment made by or assessment made on a person, as a Trustee, Guardian, Administrator or Receiver or in any fiduciary capacity will be left out of account for the purpose of determining the qualifications of a person for being included in the electoral roll of a territorial constituency.³

**(b) General Qualifications for Franchise :
Provincial Legislative Councils**

Qualifications for inclusion in the electoral roll for territorial constituencies.—The rights of persons to be included in an electoral roll in respect of constituencies formed for the purpose of elections to the Legislative Councils are dealt with in the Government of India

¹ Para 10(b), Schedule VI, the Government of India Act, 1925.

² *Ibid.*

³ Para 11, Schedule VI, the Government of India Act, 1935.

Vide Para 9 of the Government of India Provincial Legislative Assemblies, Order, 1936—which makes the same rule applicable to enrolment as regards special constituencies formed for the purpose of elections to Provincial Legislative Assemblies.

(Provincial Legislative Councils) Order, 1936, besides the general provisions mentioned in the 6th Schedule to the Government of India Act with which we have dealt with already.

Besides the qualifications which every candidate should possess, it is necessary that he should possess certain other qualifications which are prescribed in the case of each province separately. The qualifications specified for each province should be possessed over and above those of the qualifications which every one of the candidates throughout India should possess. It should be noted that a person who is included in an electoral roll for a territorial constituency, is entitled to vote in that constituency. In every province territorial constituencies are formed and for each territorial constituency is assigned certain number of seats in the Provincial Legislative Council.

Thus in the provinces of Madras and Bombay each territorial constituency is assigned certain number of seats which are specified against the names of those constituencies in the Provincial Legislative Councils Order. In the case of the other provinces, viz., Bengal, United Provinces, Bihar and Assam each of the territorial constituencies is assigned one seat only. The only exceptional case is in Bengal where there are three seats assigned to the European constituency.

General qualifications for voters at Legislative Councils' Elections.—In order to entitle a person to be included in the electoral roll of a territorial constituency formed for elections to a Legislative Council it is necessary that,

- (a) he should have attained 21 years of age.
- (b) he should be a British subject or ruler or subject of a Federated State or the ruler or subject of any other state so far as may be prescribed with regard to any province.
- (c) he should be of sound mind and should have not been declared to be of unsound mind by a competent court.
- (d) if he is a Mahomedan, Indian Christian, or a European he is entitled to be included in a Mahomedan, Indian Christian or a European constituency and not in a general constituency.
- (e) he should not have been included in any other territorial constituency (as voting in more than one territorial constituency is not allowed).
- (f) he should not have been disqualified for inclusion by any order in council, Act of a provincial legislature or under rules framed by the Governor.
- (g) if the right to be included in the electoral roll of any territorial constituency is derived from the holding of the property the property should have been by a person not as a Trustee, Guardian, Administrator or Receiver or in any other fiduciary capacity.

The above are the general qualifications for voters to the Legislative Councils throughout India to which must be added the special qualifications prescribed by each province. The special qualifications of each pro-

vince are subject only to those which are enumerated above.

PROVINCIAL LEGISLATIVE ASSEMBLIES

General Franchise Qualifications.—The provisions as regards franchise with respect to the Provincial Legislative Assemblies are contained in the Government of India (Provincial Legislative Assemblies), Order, 1936. Under Sec. 291 and Schedules 5 and 6 of the Government of India Act, 1935, His Majesty in Council is empowered to make provision with respect to certain matters relating to the Provincial Legislative Assemblies. Besides by sub-Sec. (4) of Sec. 308 His Majesty in Council is empowered to make amendments of the provisions of the Act relating to qualifications of members of Provincial Legislative Assemblies and of those entitling persons to be registered as voters for purposes of elections to the Legislative Assemblies. The above order has been issued under the said provisions.

In relation to elections to the Assemblies, constituencies territorial or special are formed. They are the same as are mentioned in the 5th and the 6th Schedules of the Government of India Act, 1935.

A special constituency is defined in the Order as a constituency not being a territorial constituency.

Persons entitled to be included in a special constituency.—In order to be included in an electoral roll for any special constituency, it is necessary that a person should have,

- (1) attained the age of 21 years.
- (2) been a British subject or ruler or subject of a Federated State or any ruler or subject

of any other Indian State if so prescribed and subject to prescribed conditions (para 5).

- (3) not been of unsound mind and declared as such by a competent court.
- (4) not been disqualified for voting or being included in an electoral roll by an Order, Act or rules of the Government of India with respect to corrupt practices and offences relating to elections.
- (5) not been subject to Indian Military Law in the case of a person otherwise qualified to be included in the electoral roll for any labour constituency (para 13).

No additional rights by possessing more franchise qualifications.—(1) The possessing of more qualifications than one would not entitle a person to have more rights in the matter of inclusion in an electoral roll [para 18(1)]. (2) A person is not entitled to be included twice in the electoral roll for any particular constituency: and the fact of such inclusion twice will not increase his rights as respects voting therein [para 18(2)].

(c) The Electoral Rolls

In all constituencies the electoral rolls would be prepared by such authority as the Governor exercising his individual judgment will appoint. Electoral rolls are kept for every special constituency and every person whose name is included therein is entitled to vote. The electoral rolls of special constituencies will be revised and kept upto date under the direction of the Governor.

For the preparation of electoral rolls in India suitable officers are appointed by the Governor by whom the electoral rolls of constituencies are to be prepared. Next to the registering authority there will be the returning officer who would be appointed by the Governor in respect of any election conducted after the electoral rolls are prepared. A person not included in an electoral roll is not entitled to vote. A person qualified to be included as an elector in the electoral roll of a constituency will be deemed to be a person qualified to vote in the said constituency. While preparing the electoral rolls in case of any doubt the opinion of the Governor would be final.

CONTENTS OF THE ELECTORAL ROLL

In an electoral roll the elector's name, his father's name, his surname, residence and the nature of his qualifications should be specified. In case the elector is a married woman her husband's name and surname are entered. For each separate area an electoral roll has got to be prepared. In case a seat is reserved for the Scheduled castes in a territorial constituency, the names of electors who are members of those castes will be shown separately. An elector will be entered in the electoral rolls for the area in which he resides. Where he does not reside he will be entered in an area in which he holds his qualification. Where an elector does not reside in an area, the place where he resides will be entered under his name in the electoral roll in which his name is entered. It should be noted that no elector can be included in more than one territorial constituency. He is ordinarily included in the electoral roll:

of the constituency in which he ordinarily resides. To this there is an exception. For instance a person may be included in the electoral roll for a territorial constituency specially formed for the purpose of electing women members as well as in a territorial constituency not so formed and for which such a person is qualified to be an elector.

A ruler or a subject of an Indian State is qualified to be included in an electoral roll although the said Indian State has not joined the Federation. If he is otherwise qualified to be so included the ruler or subject of an Indian State may be entered as an elector. Where a person has more than one wife the first married wife would be the elector where a wife of his is qualified to be entered in the electoral roll.

In certain cases applications will have to be made for being entered on the electoral roll of a territorial constituency as for instance for registration in the electoral roll of the general, Mahomedan, Anglo Indian, European, Indian Christian and women constituencies. Such applications will have to be made to the Collector and should be made after a notice inviting such applications being published by the Collector at the headquarters and district centres.

APPLICATIONS FOR ENROLMENT

The period given for sending such applications is about a fortnight that is to say the notice inviting applications for registration would be published not less than 14 days before the date named in the notice inviting applications. Where the applicant is a woman the application must be made by her husband on her behalf. If

a person bases his qualification on literacy as proof of his educational qualifications he should produce along with his applications for enrolment a certificate with a copy thereof from a competent authority that he has passed the qualifying examination. Besides, proof of literacy may be proved by the production of a certificate issued by a competent officer such as the village officer countersigned by a Revenue Officer or a justice of the peace or Honorary Magistrate or the head of an educational institution, etc. Such an application may even be written by the person in the presence of village officer or by the person appearing before the registering authority and by reading and writing in his presence. In the case of a member of the Scheduled castes his name may be included in the electoral roll if the registering authority is satisfied by inquiry that he is a literate person. As proof of the payment of the incometax by an incometax payer the production of a certificate from the incometax authorities will be sufficient in order to enable the officers to include his name in the electoral roll. Provisions are made to enable the registering officers to have access to municipal, notified area or cantonment records which are bound to give the necessary information on a requisition from the Collector.

LANGUAGE OF THE ELECTORAL ROLLS

As regards the language of the electoral rolls, the electoral rolls in respect of the European, Anglo Indian constituencies are generally in English and those of the other territorial constituencies in the language of the place of the constituency. In cities the electoral rolls are generally in English.

Registration of Voters in the Punjab.—In the Punjab and its dependencies, the electoral rolls are prepared by the Elections Commissioner either himself or through or with the help of the officers appointed to help him in the preparation of the electoral rolls, such as the Deputy Commissioners in the case of territorial constituencies, the Registrar of Co-operative Societies in the case of the commerce and industry constituencies and so on. (See The Punjab Electoral Rules, Part B, Rule 2).

In the body of the electoral rolls in the Punjab, the geographical areas are to be shown as also the name of each elector in alphabetical order (Chapter II, Rules 1 and 2). The members of the Scheduled castes are to be distinguished from others. The electoral rolls of the European, Anglo Indian, commerce and industry, and University constituencies will be in English (Chapter II, Rule 15, Punjab Electoral Rules). The Deputy Commissioner of each area concerned would be required to give notices calling or inviting applications for enrolment (Chapter III, Rules 1 and 2) and the applications may be made either in person or by post or through a messenger (Rule 6). Persons desiring to have enrolment on the ground of literacy will have to submit their applications in their own writing including therein a statement to the effect; and it shall be either written in the presence of a person authorised to receive such an application or shall be accompanied by an attestation signed by any Magistrate, Sub-Judge or a Gazetted Officer, etc. (Rule 8) or by the production of a certificate or a copy of it certified as prescribed (Rule 9)

Joint occupants of a building in the Punjab.—In the

case of joint occupants of a building in the Punjab either the person who is responsible for payment of rent to the landlord or if more than one are responsible therefor one who is nominated for the purpose in writing by all of them would be entitled to be included (Chap IV, Rule 9, Punjab Electoral Rolls).

Sikhs: Proof of being in the Punjab and North-West Frontier Province.—In the case of a dispute as to whether a person is a Sikh in the Punjab his declaration that he is a Sikh in the form provided would be accepted as sufficient. See para 11, Punjab Electoral Rules. (See also Rule 35(14), N. W. F. P. Assembly Electoral Rules where it is laid down that an objection to the registration of an elector on the roll of Sikh constituency on the ground he is not a Sikh will be accepted unless the person objected to appears and makes declaration in a prescribed form.

Factories and mines trade unions and constituent bodies of commerce and industries would be required by the Registering Officer.

REGISTRATION OF VOTERS IN NORTH-WEST FRONTIER PROVINCE

Applications for enrolment in the electoral roll by pensioned widows or pensioned mothers and by persons possessing educational qualifications should be made to the Deputy Commissioner or to Tahsildar or Naib Tahsildar at the tahsil concerned in rural constituencies and to the Secretary of the local authority in urban constituencies.

The production of Middle School Examination Certificate or the Primary (4th Class) Examination

Certificate or of a Matriculation or other higher University Certificate would be sufficient proof that the person has passed the Middle School Examination or the Primary Examination (Para 2).

Literacy of women, how proved.—A woman will be deemed to be literate within the meaning of Para 6, Part X of the 6th Schedule to the Government of India Act, if she possesses (a) a certificate of ability to read and write in some language, signed by the Head Mistress of a Recognised School and countersigned by the Inspectress or Assistant Inspectress of Girls' Schools, North-West Frontier Province, (b) an Elementary School Certificate signed by the Inspectress or Assistant Inspectress of Girls' Schools (North-West Frontier Province Electoral Rule 26).

REGISTRATION OF VOTERS IN ASSAM

Preparation, revision and publication of Electoral Rolls in Assam.—The electoral roll will be prepared whenever the Governor in his individual judgment so directs. The Electoral Roll for the European, the European and Indian planting, and the European and Indian commerce and industry constituencies will be prepared in English and in the case of other constituencies the electoral rolls will be prepared in English or in the vernacular of the District or in both as may be convenient. (Part 1, Rule 6, Assam Assembly Electoral Rules).

Women Voters in Assam.—Women in Assam could get enrolled by their applying either in person or by a letter to the registering authority and in the case of a married woman such an application may be made by her husband. An application to be included in the elec-

toral roll on the ground of literacy by a woman could be made only by sending a certificate signed by a Government Officer or by a Mauzadar or Sarpanch or by some respectable gentleman of the locality (Rule 15) and such a certificate would not be necessary if the registering officer in authority is satisfied that the application was written by the woman herself. (Rule 15(2), Assam Legislative Assembly Electoral Rules).

European control in Estates, Companies and Firms.—Estates, Firms and Companies would be treated as under European control for purposes of being entered in the electoral roll if the Board of Directors or other controlling authority of such Estate or Company or Firm, contains a majority of Europeans. (Rule 17, Assam Legislative Assembly Electoral Rules).

REGISTRATION OF VOTERS IN BIHAR

As regards the *Indian Christian Constituency* in Bihar, the Registration Officer will call upon the Chota Nagapur Catholic Sabha and the Bihar and Orissa Christian Council to submit to him within a time specified a list of members of the Electoral College nominated by the said Sabha and the Council. (Rule 17, Bihar Legislative Assembly Electoral Rules).

Commerce and Industry and Planting and Mining Constituencies.—The Registration Officer for every such constituency will call upon each of the constituent bodies to submit to him a list of the qualified members of the body or the nominees of a firm, corporation or Hindu joint family as the case may be (see Rule 18, Bihar Legislative Assembly Electoral Rules).

Labour Constituencies in Bihar.—An application for enrolment in the case of a non-union labour constituency should be accompanied by a certificate from the owners or managers of the factories or mines where a person may have worked (Rule 20 of the Bihar Legislative Assembly Electoral Rules).

The Registration Officer of the Trade Union (Mining) constituency will call upon each constituent trade union to submit to him a list of qualified members. (Rule 22), and the Registration Officer of every non-union labour constituency will call upon each qualifying factory or mine to submit to him a list of its qualified employees. (Rule 23, Bihar Legislative Assembly Electoral Rules).

REGISTRATION OF VOTERS IN SIND

Sind Electoral Rolls.—The provisions detailed below are contained in the Sind Legislative Assembly Electoral preparation, revision and publication of Electoral Rolls Rules. The registering authority is the Collector.

Decision by lots in case of doubts regarding haris.—If the registering authority is of opinion that there is a doubt as to which of more than one person is cultivating alienated or unalienated land as a hari for the purpose of deciding who should be included in an electoral roll of a territorial constituency, the question will be determined by lot to be drawn in the presence of the Assistant or Deputy Collector (see Rule 11, Sind Electoral Rolls).

Literacy of Voters how proved in Sind.—In Sind, literacy of a voter is proved by the production before the registering authority of a certificate issued by a vil-

lage officer or head munshi and countersigned by revenue officer, a justice of peace etc., or in the case of a woman by the production of an application written by a woman in the presence of a village officer or by the woman writing in the presence of the registering authority (Rule 15, *Ibid*).

Claims and objections to enrolment may be heard by Court of Small Causes in the case of Karachi City who may transfer the same to the Registrar thereof and in the case of any other area by a joint or extra joint Subordinate Judge having jurisdiction. [Rule 22(8), *Ibid*].

Enrolment in Special Constituencies in Sind: Commerce and Industry Constituencies in Sind.—The list will be in English. The registering authority is the Collector of Karachi who calls upon the constituent bodies to submit a list of electors under the signature of a responsible individual (Chapter 2, Rule 30). Claims and objections are heard by the Judge of the Court of Small Causes, Karachi.

Electoral Roll for Labour Constituency in Sind.—The Collector is the registering authority. He calls upon the owner or occupier of every registered factory within and every trade union to prepare and submit within 10 days in the case of a registered factory a list of employees and in the case of a trade union a list of its members and officers entitled to be included in the electoral roll.

Under the provisions of Part XII of the Order in Council, an application is necessary on the part of a person to the Collector and by proof to the satisfaction of

the Collector by production of a certificate from the managers or other responsible officers of factories. The electoral roll will be prepared in Sindhi [Rule 32(8)].

Every application on behalf of trade union for a certificate will have to be made to Registrar of a Trade Union [Rule 32(12), Electoral Rolls, Sind].

(d) Publication of Electoral Rolls (General)

Electoral Rolls are published at the headquarters office of the Returning Officer, and if they relate to any particular areas such as municipal, cantonment and notified areas and the like, they will also be published at the headquarters of such an office or in each of the wards, or at the headquarters of a village if it relates to a village. They are open to inspection and are available for sale to the public. A notice inviting persons to lodge their claims for inclusion in the electoral roll, or calling upon persons entered in the electoral roll to make their objections would also be published in the same manner. The claim or objection would have to be lodged in writing.

Claims and objections to entries in Electoral Rolls : How made.—In Bihar the claim or objection may be sent by post to the Registration Officer. [Rule 31(1), Part 3, Bihar Assembly Electoral Rules].

In the Punjab and the North-West Frontier Province, the claim or objection may be lodged by a claimant or his duly authorised agent [Chap. VI, (4 and 5), Punjab Electoral Rules], or by the Deputy Commissioner in respect of any omission from or entry in a Roll [Chap. VI, Rule 7, Punjab Electoral Rules, see also

Rule 35(2), North-West Frontier Province Electoral Rules].

The evidence in support of the claim or objection which the claimant or objector proposes to lead should also be in writing. In case of objection the number in the electoral roll of the person whose inclusion is objected to, and the area for which he is entered will have to be specified.

In Punjab such objections are to be made within 21 days of the date of publication of electoral rolls between the hours of 10 A.M. and 4 P.M. on any day which is not a public holiday (Chapter VI, Rule 1, Punjab Electoral Rules). Objections or claims relating to lists of voters residing in a municipality, cantonment or notified area are to be presented to the Secretary of the Local Authority or in any other electoral roll at the Tahsil Office (Chap. VI, Rule 3, Punjab Electoral Rules).

In North-West Frontier Province all documents relied upon an objection will have to be filed in duplicate (see Rule 35, North-West Frontier Province Electoral Rules). In Bombay copies of the claim or objection also will have to be sent by post or delivered to the revising authority or Judge on or before the 10th day from the publication of the electoral roll excluding the day of publication. [Bombay Electoral Rules 19(3)].

In Bihar.—In Bihar such claims or objections are to be made within 21 days in the case of General and Muhammadan Rural Constituencies and in the case of all other constituencies within 14 days from the date of publication of the electoral roll (see Bihar Electoral Assembly Rules 28).

In the North-West Frontier Province the hearing of the claims or objections should be fixed on a date being not less than 7 days or more than 10 days after the date of such posting [see North-West Frontier Province Electoral Rules 35(9)]. In the same province claims and objections should be presented within 15 days of the date of publication of the electoral roll (Rule 34, North-West Frontier Province Electoral Rules).

If a claim or objection is not lodged in the prescribed manner it would be rejected.

REVISING AUTHORITY

In General.—The revising authority is usually a Judge of the place such as a Subordinate Judge or a Judge of the Court of Small Causes (see Bombay Rules).

In the Punjab the revising authorities are the Deputy Commissioner for a Territorial Constituency, the Registrar of Co-operative Societies for Commerce and Industry Constituency, the Deputy Commissioner of the District for Landholders' Constituency, the Commissioner of Multan Division for the Tumandar's Constituency, the Registrar of Trade Unions for Trade Union Constituency, the Chief Inspector of Factories for the non-Union Labour Constituencies, and the Registrar of the Punjab Constituency (Chap. 6, Rule 2, Punjab Electoral Rolls).

A claim or objection *in the North-West Frontier Province* relating to Rural Electoral Roll will have to be presented to the Tahsildar or to the Naib Tahsildar or in their absence to the office Kanungo, and that relating to an Urban Electoral Roll at the office of the local

authority concerned to the Secretary or such authority or such person as may be appointed by the local authority (Rule 35, North-West Frontier Province Electoral Rules).

In North-West Frontier Province a person will be appointed revising authority by the Deputy Commissioner with the previous consent of the Governor [Rule 35(7), North-West Frontier Province Electoral Rules].

PROCEDURE IN HEARING CLAIMS AND OBJECTIONS

The Judge or the revising authority fixes a date for the hearing of the claim or objection and gives notice of such date and place to the claimant or objector. The registering authority will also have to be made a party and supplied with a copy of the claim or objection. The copy of claim or objection will also be placed on the notice board of the Judge. Copy of the objection and notice may be served by post to a claimant or objector at the address given in the electoral roll. A copy or notice so sent will be deemed to have been duly served. But in North-West Frontier Province such copy has got to be served in the manner provided in the Civil Procedure Code. [See Rule 35(6), North-West Frontier Province Rules].

Nature of inquiry by Revising Authority.—The inquiry should be a summary one. In Punjab the revising authority is to follow such procedure as he may think suitable (Chap. VI, Rule 29, Punjab Electoral Rules). The parties have to adduce such evidence as they have in support of the claim or objection. In the

Punjab a party to a claim or objection, may appear personally or by an agent duly authorised by a Power-of-Attorney except in the case of an Advocate of the High Court (Chap. VI, Rule 13, Punjab Electoral Rules). When however a claim is based on a right title or interest which is disputed, and which, in the opinion of the Judge cannot be determined summarily, but should be adjudicated upon in a Civil Court, the revising authority should reject the claim or objection. Usually after hearing the parties and after hearing such evidence as he considers necessary the Judge or the revising authority will pass the orders.

Objection to a person being included in a Sikh Constituency.—In the case of an objection to a person being included as a Sikh in the electoral rolls, unless the person objected to appears and makes declaration to the effect that he is a Sikh the objection would be upheld in the Punjab (Chap. VI, Rule 17, Punjab Electoral Rules).

Presumption as to correctness of Electoral Roll.—For the purpose of the revising authority's inquiry the electoral roll as published will be presumed to be correct and complete until the contrary is proved. [Rule 36 (2), Bihar Assembly Electoral Rules].

Revising Authority's right to transfer the inquiries.—If the revising authority or Judge is unable to dispose of the claims and objections within a period of four weeks from the last date fixed for the lodging of the claims and objections, he may transfer them to a Subordinate Judge (as for instance to another Small Causes Court Judge by the Chief Judge of the Small Causes in the City of Bombay or to a Subordinate Judge in any other area; or the revising authority may appoint such

number of practising Advocates, Vakils or Pleaders as may be necessary for disposing off the claims and objections within that period).

Powers of Revising Authority to order inclusion of names in Electoral Rolls.—Persons who fail to apply to the Collector or other officer under Para 4 or 6 of Part 3 of 6th Schedule to the Act may make an application to the revising authority notwithstanding such failure to have his name included in the electoral roll on or before the 10th day from the publication of the electoral roll (21). The revising authority will, on such an application being made, call for a report from the registering authority; and on the registering authority reporting that the applicant is qualified, may direct him to include his name in the electoral roll for the constituency (20). Thereafter the electoral roll will be amended and the amended copies of the electoral roll and the list of additions will be sent to the returning officers (23), and published on such date as may be directed by the Governor.

AMENDMENT OF ELECTORAL ROLLS IN OTHER CASES

Amendment of electoral roll may also be made by a direct application made to a registering authority, and the Governor, may, by notification in the Gazette direct the registering authority to prepare a list of amendments. An application may be made for the correction of an existing entry in the electoral roll if while relating to the applicant it is erroneous or defective in any particular. Besides this, an entry of an applicant's name may be made in an electoral roll on his paying a fee of

Rs. 10 to registering authority, who could, if satisfied by inquiry amend the electoral roll accordingly subject to the general or special orders of the Governor (25).

The final electoral roll will be conclusive evidence for determining whether any person is an elector in a constituency (26). The electoral roll will be in force for 5 years from the date of its final publication after which a fresh electoral roll will be prepared in the case of Provincial Assemblies.

(e) Registering Voters for Special Constituencies

Commerce and Industry Constituencies.—For preparing an electoral roll for the commerce and industry constituencies the officer appointed would call upon the constituent bodies to prepare and submit under the signature of some responsible officer of the constituent body a list of members qualified to be electors for the constituency. Such members may also be the nominees of a firm, joint Hindu family or a corporation. *In Bombay* it is the duty of the Collector to cause to be prepared an electoral roll for the Bombay Chamber of Commerce, the Bombay Presidency Trades Association, the Indian Merchants' Chamber, the Bombay Mill-owners' Association, the East India Cotton Association Constituencies. In Ahmedabad the Collector of Ahmedabad would cause an electoral roll to be prepared for the Ahmedabad Mill-owners' Association Constituency (28).

A person can only be included in the electoral roll of one constituency (28, 3). The fact whether a member is such an incometax payer as would entitle him to be included in an electoral roll, could be proved by the

statement of the incometax office. The same would be taken as conclusive evidence of the fact.

The electoral roll of a commerce and industry constituency would be in English.

Claims and objections are disposed of in the same manner as abovestated. They should however be disposed of within a period of 7 days from the last date fixed for the lodging of claims or objections. A claim in commerce and industry constituencies in Punjab may be presented only by a constituent body on behalf of a member alleged to be qualified or by an individual of a firm, a Hindu joint family or a corporation that is or claims to be a qualified member of a constituent body and an objection can only be presented by a member of a constituent body whose name is included in the electoral roll. (Chap. VI, Rule 20, Punjab Electoral Rules).

Landholders' Constituencies in India.—In the Bombay Presidency the electoral roll of the Gujarat Sardars and Inamdars Constituency and for the Thana and Bombay Suburban Districts will be in Marathi and in Gujarathi for other districts.

In the North-West Frontier Province Landholders' Constituencies, the Deputy Commissioner of the District will be the revising authority. Claims and objections may be sent by post to him and his orders after inquiry would be final. [See North-West Frontier Province Electoral Rules (Assembly), 36(1) to (8)].

Indian Christian Constituency.—In Bihar the Registration Officer of the Indian Constituency will call upon the Chota Nagpur Catholic Sabha and the Bihar and Orissa Christian Council to submit a list of members of

the Electoral College nominated by the said Sabha and Council, Bihar Legislative Assembly Rules 17, in order to prepare the necessary electoral roll.

Indian Labour Constituencies in Bombay.—Labour Constituencies are divided into Trade Union Constituencies and non-Union Labour Constituencies. It is necessary for a Trade Union to get itself certified in order to be included in the electoral roll of a labour constituency. An application to be so certified will have to be made to the Registrar (of Trade Unions) who would forward the same with his report to the Governor. The Governor may grant or refuse the certificate exercising his judgment. The Governor may also revoke the certificate granted but before he does so, he would cause a notice in writing to be issued to the Trade Union through the Registrar, to show cause within one month of its receiving why the certificate of recognition granted be not revoked on a ground specified therein. The Registrar would make inquiry and after getting the explanation forward the same with his recommendation thereon to the Governor. The Governors' revocation of certificate exercising his judgment would be final (30).

In Bihar the Registrar would call upon the constituent Trade Union to prepare and submit within 10 days of the notice, a list of its members qualified to be included in electoral roll as electors. A copy of such a notice will be sent by post to such Trade Unions as the Registration Office may direct in Bihar [Rule 20 (2), Bihar Legislative Assembly Rules].

The list would have to be submitted under the signature of some responsible officer. A copy of the list

will be kept open for inspection by any member of the constituent Trade Union.

Applications to the Registrar by persons aggrieved for amendment of list.—Any person aggrieved by any entry or omission in such a list may apply to the Registrar within 7 days from the date on which the list was kept for inspection at the office of the Registrar. The Registrar will make such inquiry as he may think necessary and his decision is final and conclusive. The list would then be amended as per his decision. [30(4) (a) (b) (c)].

Preparation of Electoral Rolls from lists submitted by Trade Union Officials.—From the list submitted as above stated and amended, the Registrar would prepare an electoral roll for each of the constituencies.

The electoral rolls will be published at the office of the Returning Officer and at such places as he may direct. The same as published will be final and conclusive and shall not be questioned in a Court or otherwise.

Electoral Roll for Non-union Labour Constituencies.—In regard to non-Union Labour Constituencies, the officer empowered in this behalf, would call upon the qualifying factories situate within the area of the extent of the constituency to prepare and submit within 10 days a list of persons employed in it and qualified to be included in the electoral roll of the constituency. For instance, the Collector of Sholapur in the Bombay Presidency causes an electoral roll to be prepared for Sholapur City (Textile Labour) constituency in the above manner.

As regards the Bihar non-Union Labour Constituency Electoral Roll, a person will not be entitled to be included in the same, unless he applies for enrolment and produces certificates from the owners or managers of the factories or mines (Rule 20, Bihar Legislative Assembly Electoral Rules, 1936).

Persons aggrieved may apply to the Collector within a specified time. The Collector then makes such inquiry as he thinks necessary and his decision is final and conclusive.

Claims and Objections in the Punjab.—In Trade Union Constituency in the Punjab may be presented either by the Secretary of the North-Western Railway Union on behalf of a person alleged to be qualified member of the Union or by the person himself who alleges he is so qualified. Objections also may be presented either by the Secretary of the Union or by the member of a Union whose name is included in the electoral roll of the constituency.

Objections and Claims for Enrolment in the case of non-Union Labour Constituency.—A claim may be presented either by the occupier of a factory or mine on behalf of an alleged qualified employee or by a person alleging to be a qualified employee, and an objection to the inclusion of a name may be made either by the occupier of a factory or mine or by any person whose name has been in the electoral roll of the constituency. (Chap. VI, Rule 22, Punjab Electoral Rules).

REGISTERING VOTERS FOR THE UNIVERSITY CONSTITUENCY

The Registrar of the University causes the electoral roll of the University Constituency to be prepared, and

sends the same to the Returning Officer. The electoral roll will usually, be in English and published at the Office of the University. General provisions as to inquiry into claims and objections would apply to this constituency.

(f) Additional points as regards Electoral Rolls

Returning Officers' powers to correct clerical or printing mistakes.—The Returning Officer has the power of his own motion or on the application of any person to correct clerical or printing mistakes in electoral rolls (Para 37, Bombay Electoral Rules), but not to enter names in an electoral roll the name of any person which may have been omitted.

Electoral Rolls for Legislative Councils.—Electoral Rolls for Legislative Councils are prepared at the instance of the Collector for each of the territorial constituencies. (Para 6). The electoral roll will be prepared alphabetically and separately for each Taluka or Mahal. A separate electoral roll would be prepared for a city.

Failure to publish Electoral Roll for prescribed time at a place.—The failure to publish the electoral roll for the prescribed period at a specified place will not invalidate the publication if reasonable precautions have been taken by the officer responsible for such publication to secure publicity. [Bihar Assembly Electoral Rules 41(1)].

Publication of extract from Electoral Roll when valid.—The publication at any place of an extract from the electoral roll so far as the portion of the constituency for which such place has been prescribed as a

place of publication is concerned, is deemed to be sufficient publication if it relates to that portion of the constituency. [Bihar Assembly Electoral Rules, 41(2)].

Misnomer or inaccurate description in Electoral Roll.—No misnomer or inaccurate description of any person or place in the electoral roll or in any list or notice will prejudice the operation of the rules relating to electoral rolls (Rule 42, Bihar Assembly Electoral Rules).

EXCLUSION FROM ELECTORAL ROLLS

Voters' right to recover damages for malicious deprivation of right to vote.—If a duly qualified citizen or person entitled to be upon the electoral roll of any constituency is omitted from such roll he would be deprived of his right to vote. The omission of his name in the electoral roll would give the Returning Officer an adequate ground for refusing him the right to vote on election day when the matter has to be decided summarily. If a voter's name is omitted wrongfully by any person from the electoral roll, the voter suffers a legal wrong being deprived of a right recognised by law. In such a case the voter has against the person so depriving him a remedy by an action for damages which may be punitive or exemplary if the conduct is the result of some malicious and wicked intention and also for any pecuniary expenses to which he may have been reasonably put as a result of the wrong done.

65 I.C. 985—*The Municipal Board of Agra vs. Asaf Arfilal.*—In the leading case of *Ashby vs. White* which was decided in the reign of Queen Anne in England it was held that where a voter was deprived of his right to vote he was entitled to recover damages.

CHAPTER III

General qualifications and disqualifications for Membership to Legislatures in India

NOTE.—In this Chapter the various qualifications for membership to legislatures in India are dealt with. Besides, the various disqualifications which would come in the way of a person being a member of a legislature are also dealt with. It should be noted that the general qualifications for membership both for the Federal Legislature and for the Provincial Legislatures are the same as will be seen below :—

General Qualifications for filling a seat in the Federal Legislature

A person should be

1. a British subject or the subject of an Indian State which or the ruler thereof has acceded to the Federation* ; and

2. not less than 30 years of age in the case of a member of the Council of State and should be not less than 25 years of age in the case of a member of the Federal Assembly ; and

3. Possessing such other qualifications specified in the schedule or prescribed thereunder as may be appropriate thereunder.

General Qualifications for filling a seat in the Provincial Legislature

A person should be

1. a British subject or the ruler or the subject of an Indian State which has acceded to the Federation or the ruler or subject of any prescribed Indian State.

2. Not less than 25 years of age in the case of a Provincial Legislative Assembly and in the case of a seat in the Legislative Council not less than 30 years of age.

3. Possessing such qualifications prescribed in this schedule as may be appropriate.

* Note : A ruler or a subject of a Native state which has not acceded to the Federation is qualified to fill a seat allocated to a Province, if he is qualified to be elected to the Legislative Assembly of that province and he may not be disqualified to fill a seat allocated to a Chief Commissioner's Province.

General disqualifications for being a member of the Federal Legislature

(a) The holding of any office of profit under the Crown in India other than an office declared by an Act of the Federal Legislature not to disqualify its holder.

(b) Being of unsound mind and standing so declared by a Competent Court.

(c) Being an undischarged insolvent.

(d) Being convicted or found guilty of, any offence or corrupt or illegal practice relating to Elections declared as an offence by Order in Council or by an Act of Federal Legislature as entailing disqualifications for membership.¹

(e) Being convicted of an offence and sentenced to transportation and imprisonment for not less than 2 years by a Court in British India or in a Federated State.²

(f) Having failed as a nominated candidate for a legislature or as an Election Agent, to lodge a return of election expenses within time and in the manner prescribed.³

(g) Being a person who is serving a sentence of transportation or of imprisonment for a criminal offence.

General disqualifications for being a member of a Provincial Legislature

(Assembly or Council)

(a) The holding of any office of profit under the Crown in India other than an office declared by an Act of Provincial Legislature not to disqualify its holder.

Exception: A minister of the Federation or for a Province is not disqualified.

(b) Being of unsound mind and standing so declared by a Competent Court.

(c) Being an undischarged insolvent.

(d) Being convicted or found guilty of any offence or corrupt or illegal practice relating to elections declared as entailing disqualification for membership of legislature, by an Order in Council or by an Act of Provincial Legislature.⁴

¹This disqualification may be removed by such lapse of time as may be prescribed by the Order in Council or by Federal Legislature.

²This disqualification is removed after a lapse of 5 years or such less period as the Governor General may allow after release in his discretion.

³This disqualification is removed if 5 years elapse from the date by which the return ought to have been lodged or if the Governor General has removed the same.

⁴But this disqualification may be removed by the lapse of such period as may be prescribed by that Order or Act.

(e) Being convicted of an offence and sentenced to transportation and imprisonment for not less than 2 years by a Court in British India or in a Federated State.¹

(f) Having failed as a nominated candidate for a legislature or

as an Election Agent to lodge a return of election expenses within the time and in the manner prescribed.

(g) Being a person who is serving a sentence of transportation or of imprisonment for a criminal offence.²

Besides the above the following have got to be noted :—

Eligibility to be chosen a member on expiry of term of membership.—Members both of the Federal or Provincial Legislatures are eligible to be chosen for a further period if otherwise qualified, upon the expiration of the term for which they are elected (vide Para 1, 5th Schedule, Government of India Act, 1935).

Prohibition of simultaneous membership.—A person cannot become a member of both chambers either of the Federal Legislature or of the Provincial Legislature. Rules made by the Government provide for the vacation by a person chosen a member of both the chambers of his seat in one chamber or the other.

When a seat in a legislature becomes vacant.—A seat in a legislature becomes vacant if a member becomes subject to any of the disqualifications, or if a member resigns his seat by a writing addressed to the Governor General in the case of the Federal Legislature (see Sec. 25, Government of India Act, 1935), or to the Governor in the case of a Provincial Legislature (see Sec. 68,

¹This disqualification may be removed by a lapse of 5 years or such less period as the Governor may allow since release.

²This disqualification is removed, if 5 years elapse from the date by which the return ought to have been lodged or the Governor has removed the same acting in his discretion.

Government of India Act) or (3) if for 60 days a member is absent from all meetings without the permission of the Chair (see Sec. 68, Government of India Act). In computing the said period of 60 days no account is taken of any period during which the Chamber was prorogued or is adjourned for more than 4 consecutive days.

Membership of Federal Legislature and of a Provincial Legislature if possible.—In case a person is chosen a member both of the Federal Legislature and of a Provincial Legislature then at the expiration of such period as may be specified in rules made by the Governor of the province exercising his individual judgment that person's seat in the Provincial Legislature will become vacant unless he has previously resigned his seat in the Federal Legislature. [Sec. 68 (2), Government of India Act].

Disqualification by criminal conviction of a sitting member : When it operates.—Where a person who, by virtue of a conviction or a conviction and a sentence becomes disqualified by conviction, is at the date of the disqualification a member of the legislature his seat will not become vacant by reason of the disqualification until three months have elapsed from the date thereof or if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of but during any period during which his membership is preserved in this manner he cannot sit or vote. (See Secs. 26 and 69, Government of India Act, 1935).

Members of the Federal Legislature

COUNCIL OF STATE MEMBERS : HOW CHOSEN

Division of provinces into constituencies how made for election to Council of State.—A Governor's province or a Chief Commissioner's province exclusive of any portion thereof which His Majesty in Council may deem unsuitable for inclusion in any constituency or in any constituency of any particular class will be divided into territorial constituencies for the election of persons to fill (a) general seats, (b) Sikh seats if any, (c) Muhammadan seats if any, or a territorial constituency may be formed of any class of constituency. On the formation of such a territorial constituency to each territorial constituency of any class one or more seats of that class will be assigned.

Voters to Sikh and Muhammadan candidates of the Council of State.—Only a Sikh or a Muhammadan can vote in respect of elections to Sikh or Muhammadan seats of the Council of State.

Persons who are entitled to be included in the electoral roll for a territorial constituency in any province for the election of persons to fill a Sikh seat or a Muhammadan seat in the Council of State, are not entitled to vote at an election to fill a general seat.

Anglo Indians, Europeans or Indian Christians are not entitled to vote at an election to fill a general seat in the Council of State.

Subject to what is stated above, the qualifications entitling persons to vote in territorial constituencies at

elections of members of the Council of State will be such as may be prescribed.

Scheduled caste representatives in the Council of State : how chosen.—In any province to which a seat to be filled by a representative of the Scheduled castes is allotted, a person to fill that seat will be chosen by the members of those castes who hold seats in the chamber or as the case may be either chamber of the legislature of that province.

Women's seats how filled.—In any province to which a seat reserved for women is allotted, a woman to fill that seat will be chosen by the persons whether men or women who hold seats in the chamber or as the case may be the chambers of the legislature of that province.

Seats allotted to Anglo Indian, European and Indian Christian communities : how filled.—Anglo Indian, European and Indian Christian representatives to the Council of State will be chosen by the members of electoral colleges consisting of such Anglo Indians, Europeans and Indian Christians as the case may be as are members of the Legislative Council of any Governor's province or of the Legislative Assembly of any Governor's province.

In the case of European members of the Council of State the rules regulating the elections by the European Electoral College will be such as to secure that on any occasion where more than one seat falls to be filled by the College no two of the seats to be then filled will be filled by persons who are normally resident in the same province.

Qualifications to hold seats in the Council of State.—A person is not qualified to hold a seat in the Council of State unless (a) in the case of a seat allotted to a Governor's province or a Chief Commissioner's province he is qualified to vote in a territorial constituency in the province at an election of a member of the Council of State or in the case of a seat allotted to British Baluchistan possesses such qualifications as may be prescribed. (b) In the case of seats allotted respectively for Anglo Indians, Europeans or the Indian Christian communities they possess such qualifications as may be prescribed. (See Para 11, Schedule 1, Government of India Act).

Term of office of Members of Council of State.—Subject to what is stated below the term of office of a member of the Council of State is 9 years.

Persons chosen to fill a casual vacancy.—A person chosen to fill a casual vacancy will be chosen to serve only for the remainder of his predecessor's term of office.

RETIREMENT BY ROTATION OF $1/3$ MEMBERS OF THE COUNCIL OF STATE

Upon the first constitution of the Council of State persons will be chosen to fill all the seats allotted to Governors' provinces, Chief Commissioners' provinces and communities. But in order to secure that in every third year one-third of the holders of such seats do retire, one-third of the persons first chosen will be chosen to serve for 3 years only, and one-third will be chosen to serve for 6 years only, and one-third will be

chosen to serve for 9 years. Thereafter in every third year persons will be chosen to fill for 9 years the seats then becoming vacant in consequence of the above arrangement.

Distribution of seats for purposes of Triennial Elections of the Council of State.—In respect of the Province of Madras in the First Council of State distribution of the seats will be on the following basis. 7 general seats, 2 Muhammadan seats and 1 women seat will be filled for 6 years and 7 general seats, 1 seat for the Scheduled castes and 2 Muhammadan seats will be filled for 9 years.

Distribution for the Bombay Province.—As regards the Bombay Province, 5 general seats, 2 Muhammadan seats, 1 women seat will be filled originally for 3 years only, 5 general seats, 1 seat for the Scheduled castes and 2 Muhammadan seats will be filled for 9 years making in all the total of 16.

For the Bengal Province.—As regards Bengal province, out of the total of 20 seats, 4 general seats, 1 seat for the Scheduled castes, 5 Muhammadan seats will be originally filled for 3 years.

4 General seats, 5 Muhammadan seats and 1 women's seat will be filled for nine years originally.

For the United Provinces.—5 General seats 1 seat for the Scheduled classes 3 Muhammadan seats and 1 women's seat will at the first instance be filled for 3 years only.

6 General seats and 4 Muhammadan seats will be filled for 6 years making in all the total of 20 members.

For the Punjab.—Out of the 16 seats, 2 general seats, 2 Sikh seats and 4 Muhammadan seats will be filled originally for 3 years only, and one general seat, 2 Sikh seats and 4 Muhammadan seats will be filled for six years only.

For the Bihar Province.—Out of the 16 seats 5 general seats and one seat for the Scheduled castes and 2 Muhammadan seats will be filled for 6 years and 5 general seats, 2 Muhammadan seats and one women's seat will be filled for 9 years.

Central Provinces and Berar.—Out of the total of 8 seats 6 general seats, 1 seat for the Scheduled castes, and 1 Muhammadan seat will be filled for nine years only.

Assam.—Out of 5 seats for Assam 3 general seats and 2 Muhammadan seats will be filled in for 6 years only at the first instance.

North West Frontier Province.—Out of the total of 5 seats assigned for the North West Frontier Province, 1 general seat and 4 Muhammadan seats will be filled for 9 years at the first instance.

Orissa.—Out of the total of 5 seats assigned to Orissa, 4 general seats and 1 Muhammadan seat will be filled originally for 3 years only.

Sind.—Out of the total of 5 seats, 2 general seats and 3 Muhammadan seats will be filled originally for 3 years only.

British Baluchistan.—The only seat assigned will be a Muhammadan seat and the same will be filled in for 9 years only.

Delhi.—The one single seat assigned to Delhi will be general seat and the same will be filled for 9 years.

Ajmir Merwara.—The only seat assigned to Ajmir Merwara is a general seat and the same will be filled at the first instance for 9 years.

Coorg.—The only seat assigned for Coorg will be a general seat and the same will be filled for 9 years.

DISTRIBUTION OF SEATS OF THE ANGLO INDIAN EUROPEAN
AND INDIAN CHRISTIAN SEATS FOR PURPOSES OF
TRIENNIAL ELECTIONS

The person chosen to serve upon the first constitution of the council to fill the *Anglo Indian seat* will be chosen to serve for 9 years. Of the 7 persons chosen to fill the *European Seats* 3 will be chosen to serve for 3 years only, 1 will be chosen to serve for 6 years only and 3 will be chosen to serve for 9 years.

Indian Christian seats.—Of the two persons chosen upon the first constitution of the Council of State one will be chosen to serve for 3 years and one will be chosen to serve for 9 years.

Distribution of seats of persons chosen by the Governor General, for purposes of retirement.—Upon the first constitution of the council of state 2 of the persons to be chosen by the Governor General will be chosen to serve for 3 years, two to serve for 6 years and 2 to serve for 9 years.

FEDERAL ASSEMBLY MEMBERS—HOW CHOSEN

The Federal Assembly (General).—In the Federal Assembly there are general seats of which certain seats

are reserved for members of the Scheduled classes. Besides it will be seen that certain number of seats are allotted to represent, Sikhs, Muhammadans, Anglo Indians, Europeans, the Indian Christians, commerce and industry, the landholders, labour and women. [See Para 18 (2), 1st Schedule, Government of India Act.¹]

Besides the above, there are 4 seats which are not allotted to any province. Of those 3 will be seats to be filled by representatives of commerce and industry and one seat to be filled by a representative of labour.

Qualification to hold a seat in the Federal Assembly.

No member is qualified to hold a general seat, a Sikh seat, a Muhammadan seat, an Anglo Indian seat, a European seat, an Indian Christian seat or a woman's seat allotted to a Governor's province or the province of Coorg in the Federal Assembly unless he is qualified to hold a seat of the same class in the Legislative Assembly or in the case of Coorg in the Legislative Council of that Province.

In the case of any other seat however, he is not competent to hold the same unless he possesses such qualifications as may be prescribed.

GENERAL, SIKH AND MUHAMMADAN SEATS OF
FEDERAL ASSEMBLY MEMBERS—HOW FILLED

The General seats, the Sikh seats and the Muhammadan seats of the Federal Assembly allotted to Governor's provinces will be chosen by electorates consisting of such of the members of the Legislative Assembly of

¹ Para 18(2), 1st Schedule, Government of India Act, 1935.

the province as hold therein general seats, Sikh seats and Muhammadan seats respectively voting in the case of a general election in accordance with the principle of proportional representation by means of transferable vote.¹

In the North West Frontier Province the holders of Sikh seats and in any province in which seats are reserved for representatives of backward areas or backward tribes the holders of those seats will for the purposes of the above provision be deemed to hold general seats.

General seats reserved for the Scheduled castes in the Federal Assembly: how filled.—In order to elect members of the Scheduled castes for the reserved seats out of the general seats, the following principles will be observed. (a) There will be a primary electorate consisting of all persons who were successful candidates at the primary elections held on the occasion of the last general election of members of the Legislative Assembly of the province, for the purpose of selecting candidates for seats reserved for the members of the Scheduled castes. (b) The members of the primary electorate so constituted will be entitled to take part in a primary election held for the purpose of electing four candidates for each seat so reserved and (c) no person who is not so elected as a candidate will be qualified to be chosen to fill such a seat.

Electorate for Women's seats to the Federal Assembly.—In order to choose women's seats to the Federal Assembly there will be for British India an

¹ Para 19, 1st Schedule, Government of India Act, 1935.

electoral college consisting of such women as are members of the Legislative Assembly of any Governor's province and the person to fill a woman's seat allotted to any particular province will be chosen by the members of the college.

Provision for ensuring election of Muhammadan and Christian women to the Federal Assembly.—Rules framed for the conduct of the election by the women's electoral college will be such as to secure that of the 9 women's seats allotted to provinces, at least two are held by Muhammadans and at least one by an Indian Christian woman.

Electorate for filling Anglo Indian, European and Indian Christian Seats of the Federal Assembly.—In order to choose persons to fill the Anglo Indian, European and Indian Christian seats in the Federal Assembly there will be for British India 3 electoral colleges consisting of such persons holding an Anglo Indian, a European or an Indian Christian seats in the Legislative Assembly of any Governor's province and the person to fill an Anglo Indian, European and Indian Christian seat allotted to any particular province will be chosen by the members of the appropriate electoral college.

Special provision as to electing Indian Christian from Madras.—In the matter of choosing at a general election the persons to fill the Indian Christian seats allotted to the province of Madras the Indian Christian electoral college will vote in accordance with the principle of proportional representation by means of the single transferable vote.

Seats in the Federal Assembly for Commerce and Industry, landholders, labour and non-provincial seats etc. How elected.—(1) Seats allotted to province representing *commerce and industry* will be filled by persons chosen by such chambers of commerce and similar associations as may be prescribed. (2) Seat allotted to a province which is to be filled by a *landholder* will be filled by a person to be elected by such persons voting in such territorial constituencies and in such a manner as may be prescribed. (3) A *labour seat* allotted to a province will be filled by such organisations or in such constituencies and in accordance with such manner of voting as may be prescribed.. (4) *Non-provincial seats*. In the case of the 3 non-provincial seats to be filled by representatives of commerce and industry, one of them will be filled by such Associated Chambers of Commerce, the second by such Federated Chambers of Commerce and the third by such commercial bodies in Northern India, voting in each case in such manner as may be prescribed and (5) The *Non-provincial labour seat* will be filled by such organisations voting in such manner as may be prescribed.

General or Muhammadan seats allotted to Chief Commissioners' Provinces.—Person to fill the general seat for Coorg in the Federal Assembly will be chosen by the members of the Legislative Council. In the other cases the members will be chosen in such a manner as may be prescribed.

INDIAN STATE REPRESENTATIVES—HOW CHOSEN

General qualifications for state representatives.—In either chamber of the Federal Legislature a person will

not be qualified to be appointed unless he, (1) is a British subject or the ruler or a subject of an Indian State which has acceded to the Federation and (2) is, not less than 30 years of age in the case of a seat in the Council of State and not less than 25 years of age in the case of a seat in the Federal Assembly.

Special provision in case of minority of a ruler of a state.—Where a ruler of a state is a minor and by reason of that not exercising ruling powers the Governor General may in his discretion declare as respects any state that any subject named or subjects generally need not be a British subject or the ruler or a subject of an Indian State which has acceded to the Federation until that state comes under the rule of a Ruler who is of an age to exercise ruling powers and that the age restrictions in para 2 above do not apply to a Ruler who is exercising ruling powers.

Eligibility for re-election to Federal Legislature on expiry of period of membership.—On the expiry of the period for which a member is appointed to serve in the Federal Legislature, a person if otherwise qualified will be eligible to be appointed to serve for a further term.

Groups of States how entitled to appoint persons to fill seats in Federal Legislature.—The rulers of group of states will appoint a person to fill a seat in the Council of State by rotation. For the Federal Assembly however, the rulers of states constituting a group of States will jointly appoint a person to fill the seat allotted to them. Even in the case of the Council of State the rulers of States which are jointly entitled to choose a person by rotation, may by agreement amongst them-

selves and with the permission of the Governor-General in his discretion appoint jointly a person to fill that seat.

*Duration of appointment of State members of the
Federal Legislature*

In the Council of State.—(1) A member appointed by a ruler of State entitled to separate representation will sit for 9 (nine) years. (2) A member appointed jointly by the Rulers of all the States in a group which have acceded to the Federation will sit for 3 years. (3) A member appointed by the Ruler of a State in rotation will sit for 1 year. (4) A member appointed jointly by rulers of some only of the States in a group which have acceded to the Federation will sit for a period equal to the aggregate of the periods for which each of them might in rotation have appointed a person to hold that seat or 3 years whichever may be the shorter period. (5) A member appointed in any other manner will sit for 3 years.

In the Federal Assembly.—A representative of the States appointed to fill a seat in the Federal Assembly will sit until the dissolution of the Assembly.

Duration of office of a State representative filling a casual vacancy in the Federal Legislature.—In the case of a State representative appointed to fill a casual vacancy, the duration will be for the remainder of the period for which his predecessor was appointed.

Discretion of the Governor-General to fix duration of office of State representatives of the Council of State.—In the case of first appointments to fill seats in the Council of State the Governor-General in his dis-

cretion will make by order provision for securing that approximately one-third of the persons appointed by Rulers entitled to separate representation will be appointed to fill seats for 3 years only, approximately one-third to fill seats for 6 years only and approximately one-third to fill seats for 9 years only.

Special provision as to duration in the case of members in the Council of State representing Panna, Mayurbhanj and Pudukkottai.—But in the case members appointed by the rulers of Panna and Mayurbhanj to the Council of State by rotation, the duration of the term of service will be 2 years and in the case of the Ruler of Pudukkottai the period will be 3 years.

Seat allotted to group of States in Federal Legislature, how filled in.—In the case of a seat allotted to a group of States jointly in the Federal Legislature that is to say to two or more States jointly in choosing a person to be appointed by them jointly to fill that seat each have one vote and in case of an equality of votes the choice will be determined by lot or otherwise in such manner as may be prescribed.

Special votes to Rulers of Panna and Mayurbhanj and to Pudukkottai.—In choosing a person to be appointed the Rulers of Panna and Mayurbhanj (as stated above) will be entitled to exercise two votes and the Ruler of Pudukkottai will be entitled to 3 votes.

Additional members to the Federal Legislature when appointed by persons appointed by the Rulers of States.—Where a ruler of a State has not acceded to Federation the seat assigned to the State in either chamber of the Federal Legislature will remain unfilled.

Similarly where a group of States have been assigned a seat and not at least one half of that group of States have acceded to the Federation in that case also the seat assigned will remain unfilled. Where on account of the non-accession of States or groups of States whether such non-accession be due either to minority of the ruler or to any other cause, the seats assigned to States or to the groups of States remain unfilled, the persons appointed by the rulers of States to fill seats in that chamber may from time to time appoint persons in the prescribed manner not exceeding one half of the number of seats so unfilled to be the additional members of that chamber. Such a member is appointed to serve in the chamber for one year only.

Special provisions as to certain groups of States.—The group comprising of the States of Dhenkanal, Nayagarh, Seraikela, Daud, Talcher, Bonai, Nilgiri, Bamra and the group of States comprising of Raigarh, Khairagarh, Jashpur, Kanker, Sarangarh, Korea and Nandgaon are assigned 3 seats each in the Federal Assembly.

Until the rulers of two of those States in each group have acceded to Federation all the 3 seats will remain unfilled ; until the rulers of 4 of those States have acceded 2 of the seats will remain unfilled ; until the rulers of 6 of those States have acceded to Federation one of the 3 seats will remain unfilled. These seats so unfilled will be treated for the purpose of what is stated as regards the unfilled seats of State representatives above.

With regard to the States which on the 1st day of January, 1935 were included in the Western India States' Agency, the Gujarat States' Agency, the Deccan

States' Agency, the Eastern States' Agency, the Central India Agency, the Rajaputana Agency, or were in political relations with the Government of the Punjab or the Government of Assam as may be enumerated in rules made by the Governor-General in his discretion, rules will be framed by the Governor-General in Council dividing them into 5 groups. Then of the 5 seats in the Federal Assembly allotted to those States one will be allotted to each of the groups. It will be noted in this connection that these States are assigned 2 seats in the Council of State and 5 seats in the Federal Assembly. A seat in the Federal Assembly allotted to one of the said groups will remain unfilled until the Rulers of at least one half of the States in the group have acceded to the Federation.

Seats for the Council of State: how filled.—The States mentioned in the above group are entitled to appoint members to the Council of State in the prescribed manner by the rulers of such of the States in the group as have acceded to the Federation. One of the 2 seats in the Council of State allotted to this group of States will remain unfilled, so long as three of the 5 seats in the Federal Assembly remain unfilled.

CHAPTER IV

Members of the Provincial Legislatures

MEMBERS OF THE LEGISLATIVE ASSEMBLIES : HOW CHOSEN

Territorial Constituencies for Elections to Provincial Assemblies.—A province will be divided into territorial constituencies with the exception of such portion thereof as the Government may deem unsuitable for inclusion for the election of persons to fill the general seats, Sikh seats if any, Muhammadan seats, Anglo Indian seats, European seats and Indian Christian seats if any, or if as respects any class or constituency it is so prescribed may form one territorial constituency.

Distribution of seats amongst Constituencies.—After the constituencies are so divided as above stated in the above cases, the total number of seats will be distributed between the constituencies by the assignment of one or more of those seats to each constituency.

Qualification to be a member of a Legislative Assembly.—A person will not be qualified to be chosen to fill a seat in the Legislative Assembly of a province unless, (a) in the case of a seat to be filled by a woman, by a European, by an Indian Christian, by a representative of backward areas or backward tribes, by a representative of commerce, industry, mining and planting, by a representative of Universities or by a representative of labour he possesses such qualifications as may be

prescribed and (b) in the case of any other seat he is entitled to vote in the choice of a member to fill that seat or any other seat of a similar class in that province.

Scheduled castes' Representatives: How chosen.—Where in a province in which any general seats are reserved for members of the Scheduled castes all members of those castes who are entitled to vote in a constituency in which any seat is so reserved will be entitled to take part in a *primary election* held for the purpose of electing 4 candidates for each seat so reserved. Any member of those castes who is not elected as a candidate at such an election will be qualified to hold a seat so reserved in that constituency if it is so prescribed as respects that province any seat in the constituency.

Women's Representatives.—Women candidates entitled to be elected to Legislative Assemblies will be chosen in territorial constituencies formed in the same way as for the general seats, Sikh seats, Muhammadan seats as above stated or constituencies specially formed for the purpose of electing women members.

Special seats 10.—In a province in which any seats are to be filled by representatives of backward areas or backward tribes, representatives of commerce, industry, mining and planting, representatives of landholders, representatives of Universities or representatives of labour, persons to fill those seats and in Bihar the person to fill the Indian Christian seat, will do so in a prescribed manner (see the Chapter on Elections).

MEMBERS OF THE LEGISLATIVE COUNCILS : HOW CHOSEN

Provincial Legislative Councils : General provisions.—In the Provincial Legislative Councils too there are general seats and seats to be filled by persons chosen to represent respectively the Muhammadan community, the European community and the Indian Christian community. Besides there is also provision in the case of the Provinces of Bengal and Bihar for seats to be filled by election by the members of the Legislative Assembly of the province in accordance with the system of proportional representation by means of the single transferable vote. Besides the above mode of filling up seats, the Governor of each province fills up certain seats by persons chosen by him in his discretion.

Territorial Constituencies in each Province for Election to the Legislative Councils.—A province exclusive of any portion which the Government may deem unsuitable for inclusion in any constituency or in any constituency of any particular class will be divided into territorial constituencies for the purpose of electing persons to fill the general seats. 2 for the purpose of electing persons to fill the Muhammadan seats, 3 for the purpose of electing persons to fill the European seats, 4 for the purpose of electing persons to fill the Indian Christian seats if any, or if as respects any class of constituency it is so prescribed may form one territorial constituency.

Distribution of seats how made in each constituency.—In the case of each such class of constituency as aforesaid the total number of seats available will be distributed between the constituencies by the assignment of one or more of those seats to each constituency.

Persons entitled to vote in a constituency to fill a general seat.—In electing a member to a general seat in a constituency persons entitled to vote in a Muhammadan constituency, a European constituency or an Indian Christian constituency will not be entitled to vote.

Persons entitled to vote in constituencies to fill special seats.—No person who is not a Muhammadan, a European or an Indian Christian will be entitled to vote in a Muhammadan constituency, a European constituency or an Indian Christian constituency.

Qualifications entitling persons to Vote for in Territorial Constituencies at Elections for Legislative Councils.—The qualifications entitling a person to vote in territorial constituencies at elections of members of a Provincial Legislative Council and the qualifications to be possessed by members of such councils will be such as are prescribed.

Term of office of a member of the Legislative Council.—The term of office of a member of the Legislative Council of a province is 9 years. But upon the first constitution of the council the Governor in his discretion is entitled to make by his order such provision as he thinks fit by curtailing the term of office of some of the members then chosen for securing that as nearly as may be one-third of the members holding seats of each class shall retire in every third year thereafter.

Member chosen to fill a casual vacancy.—In the case of a member chosen to fill a casual vacancy the term of office in his case will be to serve for the remainder of his predecessor's term of office.

CHAPTER V

Practice and Procedure at Elections

ORDER IN WHICH ELECTIONS TO INDIAN LEGISLATURES ARE CONDUCTED

The following rules of procedure as regards elections, though taken from the Electoral Rules applicable to the Bombay Presidency, are applicable in general to all the provinces. The variations and details if any, peculiar to a province are dealt with separately. Particulars as regards general procedure have got to be known first, and if necessary reference should be made to the summary of the Provincial Electoral Rules that are to be found under appropriate headings.

Elections in India according to the following Order in all Provinces—

Nomination of candidates to Legislatures.

Scrutiny of nominations.

Holding of Elections proper under which may be noted the following :—

- (a) Hours of commencement of voting.
- (b) Polling stations and voting compartments.
- (c) Presiding Officers and their duties.
- (d) Issue of Ballot papers and establishment of identity of electors.
- (e) Tendered votes and challenged votes.
- (f) Voting by Polling Officers.
- (g) Disposal of Ballot papers.

Duties and Powers of Returning Officers.

Counting and scrutiny of votes—procedure.

- (a) Rejection of Ballot papers.
- (b) Verification of Votes.
- (c) Return of Votes.
- (d) Disposal of Ballot papers.

Duties of elected candidates and their agents after election.

Disputed elections under which the following are to be noted :—

- (a) Election petition.
- (b) Parties to petition.
- (c) Deposit of security.
- (d) Withdrawal of petition.
- (e) Hearing of petition and the procedure followed.
- (f) Finding and Judgment.

Candidates contesting more than one seat.

Vacancies and Bye-elections.

Special Procedure in case of Special Constituencies.—Although the procedure outlined above is common to all elections conducted in India, in the matter of special constituencies, the procedure followed differs in certain respects as in the method of voting prescribed in the cases of,

- (a) European and Anglo Indian Constituencies.
- (b) Scheduled castes for whom seats are reserved.
- (c) Commerce and Industry Constituencies.
- (d) Landholders Constituencies.
- (e) Labour Constituencies.

(f) University Constituencies and such other Special Constituencies.

Introductory note on Elections.—The establishment of Federation will be by a proclamation of His Majesty who will appoint the date. (See Sec. 320 of the Government of India Act, 1935).

But provision is made for enabling members of all Provincial Legislatures to be chosen in time. (Government of India Commencement of Transitory Provisions Order, 1936, Para 4). The Governors' Provinces have accordingly been specified with a view to constitute the Provincial Legislatures therein, according to the Government of India Act and the qualifications for membership to the various Provincial Legislatures in India have been specified. Various provisions as to franchise have been made as regards the various constituencies formed in the several provinces both in respect of elections to Provincial Legislatures and the Federal Assembly and the Council of State (Schedule VI, Government of India Act, 1935).

Although provisions as to franchise are specified as regards the whole of British India, certain areas are excluded either wholly or partially, and the same are known as "*excluded areas*" or "*partially excluded areas*."

His Majesty, may, by Order in Council declare such excluded or partially excluded areas (see Sec. 91, Government of India Act, 1935). The effect of such exclusion is that the executive authority of a province extends to them. No act of the Federal Legislature or of the Provincial Legislature applies to them. (Sec. 92,

Government of India Act, 1935). Hence there is no question of elections in such areas, (see the Government of India (excluded and partially excluded areas), Order, 1936). We are therefore, for the present concerned, so far as election matters go, with areas other than those excluded or partially excluded as pointed out above. His Majesty in Council is empowered to make provision with respect to certain matters connected with Provincial Legislative Councils by virtue of the Sec. 291 of the Government of India Act, 1935, such as the delimitation of territorial constituencies for the purposes of Elections under the Government of India Act; the qualifications entitling persons to vote in territorial and other constituencies, at such elections, and the preparation of electoral rolls, the qualifications for being elected at such elections as a member of a Legislative Body; the conduct of the elections and the methods of voting, expenses of candidates at elections, etc. Rules also are framed by the Governors of Provinces where provisions are not made in matters relating to elections in the Provinces by virtue of powers under Para 20, of the 5th Schedule to the Government of India Act, 1935.

On voting generally.—Under the present constitution there are three modes of election to legislative bodies. They are :

- (1) Primary elections.
- (2) General elections.
- (3) Elections in Special Constituencies.

Primary elections are conducted before the general elections. They are conducted for the benefit of the Scheduled castes. In the Primary elections a panel of 4 candidates is elected for every seat reserved for the

Scheduled castes out of the general seats in a Provincial Legislature to be filled by election in general elections. Out of the panel of 4 candidates elected in the primary elections one has to be chosen by election at the general elections.

The general rule is personal voting in respect of elections of candidates in all constituencies, that is to say, the voters are to go to the Polling booth and vote for the candidate for whom they desire to vote, by inserting the Ballot paper in the Ballot box of the candidate concerned. But in certain cases postal voting is prescribed as in the case of the University or European Constituencies. (As to where postal voting is in vogue in the provinces, see the Electoral Rules Special to Provinces). Where postal voting is prescribed the Ballot papers are to be sent to the voters by the Returning Officer and the voters have to fill the declaration forms sent along with the Ballot papers before an Attesting Officer and send the same along with the Ballot paper marked by the voter and placed in a sealed cover to the Returning Officer. As observed above the general rule is personal voting and postal voting is an exception prescribed in certain cases. The method of voting in primary elections is personal in every case.

GENERAL PROVISIONS AS TO VOTING IN PROVINCIAL LEGISLATURES

Distributions of votes by Voters if permissible.—It has been provided both by the Government of India (Provincial Councils) and the Assemblies Orders 1936, as follows :—

At an election in a territorial constituency where more than one seat is to be filled on a poll a voter shall

have as many votes as there are seats to be filled and may give all those votes to any one candidate or may distribute them between such candidates in such manner as he thinks fit.

NOTE:—This provision is common in the case of elections to the Provincial Legislative Councils and the Legislative Assemblies. But in the case of elections to the Bengal Legislative Council in the European Constituency a voter is not allowed to give more than one vote to any one candidate.

Equality of Votes : Tie in Poll : How Solved.—When a poll is taken at an election if an equality of votes is found to exist between two candidates one additional vote may be given by the Returning Officer in favour of one of such candidates or a lot may be drawn before the Returning Officer in such a manner as he deems fit to determine who is to be elected.

The above provision is common to elections of both the Provincial Legislatures as provided by the Government of India Provincial Legislative Councils Order, Para 18, Assemblies Order, Para 19.

Provincial Elections.—His Majesty in Council made provisions with respect to certain matters connected with Elections under Sec. 291 of the Government of India Act, 1935, and specified the offences and practices involving disqualification for membership of Provincial Legislatures under Sec. 69, sub-Sec.(1) of the same Act. Accordingly the Government of India (Provincial Elections) Corrupt Practices and Election Petitions Order, 1936, has been issued.

Election Agents.—Every candidate for Provincial Elections, has to appoint, himself or some other person

as an Election Agent (Para 1); such an Election Agent should not have been a disqualified person (Para 2). In case the appointment of an Election Agent is revoked the candidate should sign a revocation and the same should be lodged with a Returning Officer. Such a revocation is operative from the date on which it is lodged with the Returning Officer (Para 3). In case of death of an Election Agent or his appointment being revoked, either before, during, or after the elections but before the filing of the return for election expenses, a candidate should either appoint himself or some other person as an Election Agent and notify the same to the Returning Officer immediately.

VOTING AT ELECTIONS OF PROVINCIAL LEGISLATURES

Powers to make rules.—In so far as provision is not made by the Government of India Act, His Majesty in Council by virtue of Sec. 291 of the Government of India Act is empowered to make provision with respect to matters such as the delimitation of territorial constituencies for purposes of elections qualifications entitling persons to vote in territorial or other constituencies, the qualifications entitling a person to be elected as a member of any Legislative body, etc. A like power is given by Para 20 of the 5th Schedule by virtue of which the Governor of a province is entitled, in so far as provision is not made either by the Government of India Act or by His Majesty in Council, to make rules for the filling of vacancies, the nomination of candidates, the conduct of elections, the expenses of elections and of the candidates at elections, the corrupt practices and other offences at or in connection with elections, the decision

of doubts and the manner in which the rules are to be carried into effect.

The Government of India (Provincial Legislative Councils) Order, 1936 and Provincial Legislative Assemblies Order.—The above Orders have been passed in order to provide for matters relating to elections as regards the Provincial Legislatures, *viz.*, the Legislative Councils and the Legislative Assemblies in the Provinces.

In exercise of the powers above mentioned, the Local Governments of the Provinces have made rules for the preparation of Electoral Rolls, the mode of conducting elections, etc. Below is given a summary as to the way of preparing Electoral Rolls in India.

General Practice and Procedure in Elections

BOMBAY AND OTHER PROVINCES

The procedure at election and the practice followed therein may be conveniently dealt with under four headings :—

- (i) Nomination and scrutiny of nominations.
- (ii) Voting and scrutiny of votes.
- (iii) Return of election expenses.
- (iv) Inquiries into validity of elections.

Rules are framed by each Local Government under Part I of the Government of India Provincial Legislative Council's and Assembly's Orders and under the Government of India Act for the regulation of elections.

NOMINATION AND SCRUTINY OF CANDIDATES

It is necessary that a candidate for election in India should get himself nominated, and with that view see whether he is qualified to be nominated or not. Any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the Government of India Act or any Order or Rule made thereunder or an Act of the Provincial Legislature. Each candidate will have to hand over to the Returning Officer at the hours fixed a nomination paper completed in a prescribed form and subscribed by a candidate himself as assenting to the nomination and by two persons as proposer and seconder who are electors in a constituency. This form will be supplied by the Collector or the Officer appointed in this behalf. As regards proposers and seconders, any person who is an elector in a constituency and not subject to any disabilities may subscribe as proposer or seconder, as many nomination papers as there are seats to be filled in the constituency and no more. Each nomination paper will be accompanied by a declaration in writing subscribed by the candidate that he appoints as his Election Agent a particular person or himself. If a person is to be appointed as an Election Agent it is necessary that he should not himself be disqualified under the provisions of Part IV of the Corrupt Practices Order from being a member of Provincial Legislature or from voting at elections. No nomination would be valid unless such a declaration is delivered along with such nomination paper.

Deposit.—After the nomination papers are delivered to the Returning Officer they are signed by him and

the date of their being handed over, would be mentioned thereon together with the hour at which they are delivered. After the nomination paper is lodged a candidate should deposit a sum of Rs. 500 in the case of a Legislative Council Election and a sum of Rs. 250 in the case of a Legislative Assembly Election and if the candidate is a candidate belonging to the backward tribes, in a constituency in which a seat is reserved in the Assembly for them, the amount of deposit would be only Rs. 50 in Bombay.

Return of Deposit.—The deposit made in the above manner will be returned under two circumstances:—
(1) where the candidate withdraws his candidature by a notice in writing subscribed by him and delivered to the Returning Officer either personally or by his proposer or seconder before his nomination is scrutinised and
(2) where nomination of any such candidate is refused. In this case it will be returned to the person by whom it is made. (3) In the case of a candidate who dies before the poll is commenced, the deposit made by him would be returned to his legal representative. Deposit made in the above manner would be forfeited in case a candidate fails to secure a particular number of votes fixed.

Scrutiny of nominations.—After the deposit is made the nominations would be scrutinised and at the time of scrutiny of nominations, the candidates, their election agents, proposers and seconders and one other person duly authorised in writing by such candidates but no other person would be allowed to attend at the headquarters of the office of the Returning Officer to watch the scrutiny of nominations.

Objections to nominations.—A date will be fixed for the disposal of objections, and the Returning Officer will on that date examine the nomination papers and decide all objections which may be made to any nomination.

Grounds for refusal of nominations.—Grounds on which nomination may be refused are any of the following :—

- (a) that a candidate, is not qualified, or is disqualified for election under the provisions of the Act or of any Order or Rule made under the Act or of the Provincial Legislature ;
- (b) that the proposer and seconder is not qualified for subscribing a nomination paper ;
- (c) that there was a failure to hand over nominations in time or that there has been no declaration of the appointment of Election Agent or that there has been no deposit on nomination as above stated ;
- (d) that the proposers and seconders are not identical with the names and numbers on the electoral roll ;
- (e) that the signature of any person has been found to be not genuine or has been found to be obtained by fraud.

Scrutiny of nominations on same day.—After the completion of the scrutiny of nominations the Returning Officer will endorse on each nomination paper his decision accepting or rejecting the nomination paper and if a nomination is rejected he will record his reasons in writing. The scrutiny will as far as possible have to be

completed on the same day as no adjournment of scrutiny will be allowed.

Withdrawal of candidature.—It is open to a candidate to withdraw his candidature by notice in writing subscribed by him and delivered to the Returning Officer on the date succeeding that fixed for the nomination of candidates and the scrutiny of nominations. It is necessary that a candidate should deliver the notice of withdrawal either in person or by his proposer or seconder. A candidate who withdraws his candidature will not be allowed to cancel his withdrawal or to be renominated as a candidate for the same election. As soon as a candidate withdraws the fact of his withdrawal would be notified by the Returning Officer in a conspicuous place. After the completion of the scrutiny of nominations a list of valid nominations will be made and notified.

De novo proceedings on death of candidate after nomination and before poll.—If after the nomination and before poll a candidate dies, the Returning Officer is entitled to countermand a poll and report the fact to the Governor, and all proceedings with reference to the elections will be commenced afresh in all respects as if for a new election.

Nominated candidates equal or less than the number of seats.—After nominations if the number of candidates nominated is equal to the number of seats to be filled, the Returning Officer will declare all such candidates to be duly elected. If the number of candidates to be elected is less, than the number of seats in any constituency the Governor is to call upon the constituency to elect a person or persons to fill the remaining

seats, and if the constituency fails to do so, the Governor will not be bound to call upon the constituency to elect a person again until such time as he may think fit.

If the number of candidates nominated is more than the seats to be filled, the Returning Officer will publish their names in the Gazette and arrange for the printing and supply of the necessary Ballot papers.

VOTING AND SCRUTINY OF VOTES

After the nomination of candidates, the next step is voting. Voting would be done at the hours fixed and published by notification in the Gazette. The Collector is to select for each constituency the necessary number of polling stations and appoint a Presiding Officer for each polling station.

Presiding Officers and Polling Officers.—The Presiding Officer may appoint any person to be a Polling Officer. If a Polling Officer is absent, and if the Presiding Officer is absent, his duty could be performed by one of the Polling Officers. It is the duty of the Polling Officer to keep order at the polling station, see that the election is properly conducted, regulate the number of electors to be admitted at one time, and generally attend to the conduct of electors. Any person who misconducts himself at the polling station or fails to obey a lawful order of the Polling Officer may be removed from the polling station by any Police Officer or persons authorised in that behalf.

Issue of Ballot papers and Voting.—Ballot papers will be issued during the hours fixed and voting will be done in the compartments by electors screened from

observation. The Ballot boxes will be shown as empty before election by the Presiding Officer and before the voting actually begins he should read provisions of Sec. 14 of the Indian Election Offences and Enquiries Act, 1920. After a Ballot paper is delivered to an elector a mark will be placed in the copy of the electoral roll, against the number of the elector to denote that he has received a Ballot paper. On the counterfoil of the Ballot paper the signature and thumb impression of the elector will be taken. In order to ensure that the Ballot paper is delivered to the right elector and in order to establish the identity of electors, the Presiding Officer may put questions to the elector, and on his being satisfied that he is the right person, he may deliver the Ballot paper to the elector. The Ballot paper will be in a prescribed form.

Tendered Ballot papers.—If at the time of voting it is found that a person applied for a Ballot paper after another person has voted as such elector, the applicant will be provided with a Ballot paper which he will be entitled to mark in the same manner as any elector. Such a Ballot paper will be known as a tendered Ballot paper and the same will not be put in the Ballot box but will be given to the Presiding Officer and set aside by him in a separate packet. The same will not be counted by the Returning Officer. Such votes are entered in the list by a Returning Officer, called a "Tendered Votes List."

Challenged votes.—If at an election, any polling agent declares and undertakes to prove that any person by applying for a ballot paper has committed the offence of personation, the Presiding Officer may require

such a person to enter in the list of challenged votes, his name and address or his thumb impression if he is illiterate, and may require further such person to produce evidence of identification. If such a person on being questioned as to his identity answers in the affirmative, he will be allowed to vote after he has been informed of the penalty for personation. The Presiding Officer will make note of the circumstances and of his decision on the list of challenged votes. The Presiding Officer may also require to be made a deposit of a sum of Rs. 20 in the case of Bombay and Madras for each such challenge. The deposit will be forfeited if on enquiry the challenge is found to be frivolous and not made in good faith.

Voting by Polling Officers.—A Presiding Officer, Polling Officer or Polling Agent, may also vote if certified by the Collector to be entitled to vote.

Conclusiveness of certified copy of an entry in electoral roll in general.—In all elections both general or primary in all provinces the production of a certified copy of an entry made in electoral roll will be conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe a nomination paper. See Bombay rules, Legislative Council Elections [13 (2); Madras Assembly Rules 25 (2) and also Madras Legislative Assembly Election Rules 45 (2) (a)].

After the voting is over, the Presiding Officer makes separate parcels of all the ballot boxes used at the Polling Station unopened, the unused ballot papers, the tendered ballot papers, the spoilt ballot papers, and the marked copy of the electoral roll, the counterfoils of the ballot papers, the tendered votes list and the list

of challenged votes. The same would be sealed in separate packets with the seal of the Returning Officer and the seal of such candidates or agents as may desire to affix their seal and then sent to the Returning Officer.

COUNTING OF VOTES : HOW DONE

The Returning Officer, will, on a particular day fixed by the Governor and of which he will give notice to all the election agents and candidates, count the votes. The counting of votes will be done in the presence of the Returning Officer and the persons appointed by him to assist him in the counting of votes, the candidates, the election agents, and one representative of each candidate authorised in writing by the candidate himself.

On the day appointed and the time fixed for the counting of votes the Returning Officer will read the provisions of Sec. 14 of the Indian Election Offences and Enquiries Act, 1920, and the ballot boxes relating to each Polling Station will be opened one after the other. The Returning Officer will take out the ballot papers, count them or cause them to be counted and record the number in a statement. This statement will not be shown to any candidate or agent. But the Returning Officer will mix together all these ballot papers and distribute them in convenient bundles to the persons appointed to assist in counting the votes.

Declaration of Results.—After the counting of votes has been completed the Returning Officer is to declare the candidate or candidates to whom the largest number of votes has been given to be elected and report the

result of election to the Government. While counting the votes, the ballot papers in which the number of votes recorded exceeds the number of seats to be filled, the ballot papers over which no vote is recorded, the ballot papers void for uncertainty, ballot papers bearing marks by which an elector can be identified, will be rejected. The decision of the Returning Officer as to the verification of the ballot papers will be final, subject only to reversal on an election petition claiming the seat.

After the counting of votes the Returning Officer will make a return of the verification of votes, the names of candidates for whom valid votes have been given, the number of such valid votes, the name of the candidates elected etc. After the declaration of the result the packets of ballot papers and counterfoils would be kept sealed with the Returning Officer and the same will not be opened or the contents inspected or produced except under the order of a competent Court or of the Commissioners appointed to hold an inquiry into the elections.

RETURN OF ELECTION EXPENSES

After an election, a candidate who is returned will have to file a return of election expenses within 35 days from the date of the publication of the result of an election. It should be signed both by the candidate and his election agent in a form prescribed. The return would contain the expenses incurred on account of the conduct and management of the election and also a statement of all unpaid claims. The return will be accompanied by a declaration made by the candidate

and his election agent in a form which contains the name and description of the paper and the amount paid. In case the candidate is absent the return is to be made and filed by the candidate's election agent. After the return is filed, the Returning Officer will cause the notice of the date on which the return and declaration has been lodged and notify the time at which they could be inspected. The Government maintains a record showing the names of candidates, their election agents, the date of election, the name of the constituency, the date on which the return of election expenses was lodged and the amount of expenses incurred by each candidate. The record will be open for inspection by the public, subject to such conditions as may be prescribed by the Government. The record will be kept without being destroyed for 6 years from the date of election.

Election Agent to keep separate account.—In all elections the election agent will have to keep a separate and regular account of all expenses incurred by him.

Maximum election expenses in Madras.—The Madras rules for the elections to provincial legislatures prescribe the maxima of election expenses including personal expenses incurred by candidates either of the Assembly or of the Councils, i.e. Where the number of registered electors is 8000 or less the maximum limit of expenditure is Rs. 1,000 and in all the other cases Annas 2 for every registered voter. (Rule 102, Madras Legislative Assembly Election Rules and 82 of the Madras Legislative Council Election Rules.)

DISPUTES AND ENQUIRIES INTO THE VALIDITY OF ELECTIONS

Time for filing Petitions.—After elections, petitions may be filed and presented to the Governor under Part III of the Corrupt Practices Order within 14 days from the publication in the gazette of the notice of the date on which the return of election expenses of the returned candidate and the declarations made in respect thereof were lodged with the Returning Officer. Or, within 30 days from such publication by an Officer empowered in that behalf by the Governor exercising his individual judgment on the ground that the election has not been a free election by reason of a large number of cases of undue influence and bribery committed or exercised in the election. And if the election is sought to be questioned on the ground of a candidate or his agent being guilty of bribery, undue influence, or personation as defined in Chap. IX (a) of the Indian Penal Code in respect of the election, the petition must be presented within 14 days from the date on which the returned candidate or his agent or other person is convicted of the offence.

Persons to Present Petitions.—The petition may be presented by the candidate or elector as the case may be. It should be presented to the Governor or any other officer appointed by him by the person making the petition or by a person authorised in writing by that person or it may be by registered post. If the last date for the presentation of a petition is a holiday it may be presented on the succeeding day.

Form of the Petition.—Contents of the petition will have to be arranged into paragraphs and numbered

consecutively. It should be signed by the petitioner and verified in the manner laid down in the Civil Procedure Code, 1908 for the verification of pleadings. The petition will have to be accompanied by a list signed and verified as above stated, setting forth the full particulars of any corrupt practices and persons alleged to have committed them and the date and place of commission of such practice. After the petition is filed it will be heard by Commissioners appointed by the Governor, and they may, in their discretion upon such terms as to costs allow the particulars in the list to be amended. A petitioner in his petition may not only question the election of a candidate, but he may claim a declaration that he himself has been duly elected. Where he makes such a claim he ought to join as respondents all other candidates who were nominated at the election.

Deposit as Security for Costs of Petition.—At the time of making the petition, the petitioner will be required to deposit a sum of Rs. 1,000 in cash or in Government Securities of the market value of the day as security for the costs of the petitioner. The Governor may dismiss the petition in case it is not presented within time or the contents of the petition do not contain material facts or that there was no deposit made when the petition was presented.

Procedure before Commissioners.—If the petition is not dismissed in this manner the president of the commissioners will cause a copy of the petition to be served on each respondent and to be published in the Gazette. He may call on the petitioner to execute a bond with or without sureties for the payment of any further

costs. Within 14 days of such publication, any other candidate may be entitled to be joined as a respondent on his giving security in a like amount and procuring the execution of a like bond. The execution of such a bond will not be required where a petition is presented by an official empowered in that behalf by the Governor as required by Clause (b) Para 3, Sub-para 1 of Part III of the Corrupt Practices Order. In the case of such a person authorised by the Governor no deposit of security will be required. The Commissioners will next proceed to hear the petition following the procedure under the Code of Civil Procedure, 1908 for the trial of the suit. They will make a memorandum of the substance of evidence of any witness and hold their enquiry at such place as may be appointed by the Governor. The Commissioners may also sit in their discretion at any other place. They may depute any one of their number, to take evidence at any place in the province.

Withdrawal of an Election Petition.—An election petition can be withdrawn only by the leave of the Commissioners on an application made. Before the appointment of Commissioners it may be allowed to be withdrawn by the Governor exercising his individual judgment. In case there are more petitioners than one no application can be made except with the consent of all the petitioners. If an application is made for withdrawal to the commissioners, they will give a notice fixing a date for the hearing of the application to all the parties to the petition and the same will then be published in the Gazette. In case the Governor exercising his individual judgment or the commissioners are of the opinion that the same is induced by any bargain or

consideration they may refuse to allow the withdrawal of the application.

Substitution of Petitioners when allowed in place of those who have written.—If the application is granted the petitioner, may be ordered to pay the costs of the respondents incurred so far, or such portion thereof as they may think fit. After the petition is withdrawn a notice of the withdrawal will be published in the Gazette, and any person who might have been a petitioner may apply to be substituted as a petitioner within 14 days of such publication, in place of the party withdrawing. He may be entitled to be substituted upon his complying with the conditions as to security, being deposited, when petitions are filed. Where a petition has been allowed to be withdrawn and there is no substitution of another petitioner, the Commissioners will have to report to the Governor the fact of such withdrawal.

Abatement of an election petition on death of sole petitioner.—An election petition abates only on the death of a sole petitioner or of the survivor of the several petitioners. If the petitioner is an officer appointed by the Governor to file the petition the same may be continued by another officer empowered in this behalf by the Governor. As soon as a petition abates the same will be published in the Gazette at the instance of the Commissioners where the abatement occurs after their appointment, and by the Governor if a petition abates before the Commissioners are appointed. After such publication any person may apply who might himself have been a petitioner, within fourteen days after the application, to be substituted as a petitioner in place

of the deceased person. The substituted petitioner will have to comply with the condition as to the deposit of security as above stated, and he will be allowed to continue the proceedings on such terms as Commissioners may think fit.

Withdrawal or Death of Respondents during Trial of Petition.—If before the conclusion of the trial of a petition the respondent dies, or notifies that he does not want to oppose the petition, the Commissioners will cause a notice of such an event to be published in the Gazette. In either case, any person who might have been a petitioner may apply within 14 days of such a publication to be substituted for such a respondent to oppose the petition. On such a person being substituted he will be allowed to continue the proceedings on such terms the Commissioners may think fit.

Where defeated candidate claims seat—Procedure.—If in an election petition any candidate other than the returned candidate claims the seat for himself the candidate returned or any other party may give evidence to prove that election of such a candidate would have been void, if he had been returned a candidate and a petition has been presented complaining of his election. In the same case, any party to the election petition other than the returned candidate may also give evidence to prove that the returned candidate's election is void. Where a person gives evidence against the returned candidate he will not be allowed to claim the seat unless he himself had lodged an election petition claiming the seat for himself under the provisions of the Corrupt Practices Order. A returned candidate will not be entitled to give evidence to prove that the elec-

tion of a person would have been void, if he had not himself within 14 days from the date of the publication of the election petition given notice of his intention to the Commissioners, made the deposit and procured the execution of the bond referred to above. Every such notice will be accompanied by a statement and list of particulars signed and verified of corrupt practices alleged.

Duty of person elected to more than 1 seat.—There are certain provisions such as that if a person is elected to more than 1 seat he should resign all but one of the seats to which he is elected within 7 days from the date of publication in the Gazette. The resignation should be in writing signed by him and delivered to the Secretary of the Council. If he fails to comply with this requisition, all the seats of such a person in the Council would become vacant. Where a seat becomes vacant by death or the election being declared void or by the expiry of the term of office, the Governor has the right to call upon the constituency to elect a member.

The nomination papers, the declarations of the appointment of the agents, the withdrawals of candidates, the verified statements and returns made by the Election Officers, the returns of election expenses lodged by candidates and lastly the election petitions, the findings of the Commissioners and the evidence recorded, etc., will be taken charge of and preserved by the officers concerned for such period as may be prescribed under the Rules framed by each Local Government.

RESERVED SEATS

Rules for Elections to Reserved Seats.—Where seats are reserved in a Legislative Assembly as in the case of

Scheduled castes, Maratha representative of backward tribes or areas, Bengal Anglo Indian or women the following provisions are made.

(1) If the number of candidates qualified is equal to the number of seats to be filled up all the candidates will be declared elected.

(2) If the number of candidates qualified is bigger than the number of reserved seats to be filled up, the candidate or candidates securing largest number of votes will be declared elected to reserved seats.

(3) If the number of qualified candidates is less than the number of reserved seats the Governor is to call upon the constituency by a notification in the Gazette to elect the requisite number of persons and if in spite of being so called upon the constituency fails to do so the Governor is not again to call upon the constituency until such time in his discretion as he thinks fit (Para 16).

Primary Elections.—Primary elections are held for the purpose of electing candidates who will be qualified to be chosen to fill a reserved seat. Reserved seats are those reserved in a general constituency for members of the Scheduled castes. In the matter of Primary Elections the Rules above stated which refer to nominations, scrutiny of nominations, withdrawals, voting, counting of votes, declaration of results, disposal of Ballot papers, and appointment of agents in elections will also be applicable. A person belonging to the Scheduled castes may be nominated as a candidate for Primary Election if he is qualified to be chosen to fill a reserved seat.

Notification of dates for Primary Elections.—The Governor in his discretion fixes dates for the nomination

of candidates and also a date not later than the 14th day after the date of the nomination calling upon the members of the Scheduled castes to elect four candidates for the reserved seat, and also a date, if necessary, for a poll. The dates will be notified. In the case of Primary Elections the proposer and seconder of a candidate should be members of the Scheduled caste.

Deposit.—On nomination a sum of Rs. 50 in cash or in Government Securities of equal value at the market value of the day should be deposited with the Returning Officer. The deposit will be returned in case of withdrawal as in the case of other candidates or if the nomination of a candidate is refused. Further, if any candidate dies before the commencement of the poll at the final election the deposit will be returned to his legal representative or if made by any other person it will be returned by that person by whom it was made.

Forfeiture of Deposit.—The deposit will be forfeited in three cases. Firstly, where the votes polled by a candidate do not exceed one-fourth of the total number of votes polled by the candidate who has secured the lowest number of votes amongst the successful candidates. Secondly, if a candidate is nominated at a Primary Election in more than one constituency only one of the deposits will be returned and the remainder will be forfeited to the Government. Thirdly, if a candidate is nominated at the final election in more than one constituency in that case also only one of the deposits made by him would be returned and the remainder forfeited. A deposit if it is not forfeited will be returned after the publication of the result of the Primary Election in the Gazette.

As regards procedure at the Primary Elections, if the number of candidates nominated exceeds four, for each reserved seat, the Returning Officer will publish the names of the candidates assigning symbols to each candidate and a poll will be taken. If the number of the candidates does not exceed four, the Returning Officer has to declare all of them duly elected. The form of Ballot paper will be in a prescribed form, and before it is delivered the Presiding Officer may put the elector questions in order to satisfy himself as regards the identity of electors. The Ballot paper would be rejected if the number of votes recorded thereon exceeds one, if no vote is recorded thereon, if more than one mark is placed against the name of any of the candidates, if it is void for uncertainty and lastly if it bears any mark by which an elector can be identified. The decision of the Returning Officer as to the validity of a Ballot paper will be final subject to reversal on an election petition made. After the election, where a poll is taken, the Returning Officer will have to prepare a list showing candidates who have been elected, their symbols and cause the list to be published. All those persons elected at a Primary Election as candidates for a reserved seat will be deemed to have been validly nominated as candidates for election both to the reserved seat as well as to non-reserved seats in the constituency. If a candidate who has been elected in a Primary Election dies before the commencement of the poll for the final election, the Returning Officer has to countermand the poll and report the fact to the Governor and thereafter all the proceedings in connection with the Primary Elections will commence anew as if for a new election, but no fresh nominations will be necessary in the case of a candidate who

was validly nominated at the time of the countermanding of the poll. But in Assam an agent appointed for a Primary Election will be considered to be an Election Agent for the final election also. After the Primary Election a nominated candidate will have to file returns of election expenses with Returning Officer within thirty five days from the date of the publication of the result of the Primary Election, in the same way as returns filed in the case of general action.

If a person is elected at Primary Election in more than one constituency in which a seat is reserved for Scheduled caste he should within two days from the declaration of the result of election resign all but one of the seats by notice in writing delivered to each of the Returning Officers. Unless he does so, all his seats would become vacant.

A Primary Election can be called in question by an election petition presented against an elected candidate or candidates to the *District Magistrate* or in the case of an election in the Madras City to the Collector.¹ It may be presented by any candidate or elector for primary election within two days from the date on which the result of primary election is declared by the Returning Officer. It may be presented by a person or his duly authorised agent who is authorised in writing. A petition can be filed on the next day after a holiday in case the last day of the period for the presentation of an election petition happens to be a holiday. The contents of the petition should be arranged and presented in the same manner as in the case of election petitions as that with above. The deposit required at the time of presentation of the

¹ Rule 103(n), Madras Legislative Assembly Election Rules.

petition is a sum of Rs. 250 in cash or in Government securities of equal value at the market rate of the day.

Election petitions will be enquired into by District Magistrate or any other officer authorised by him. An inquiry will have to be completed within a period of ten clear days after the expiry of the last date on which an election petition may be filed, as above stated. The inquiry would be conducted in a summary fashion after notices of the petition are served on the candidates. The mode of inquiry would be as for summary trials under the Code of Criminal Procedure, 1898 and the evidence to be recorded by the District Magistrate also would be done according to the same procedure. In case more petitions than one are presented in respect of the same election the District Magistrate may hear all of them together or separately as he might choose.

Where in an inquiry it is claimed that a candidate other than the respondent has been duly elected, the respondent or any other party may give evidence to prove that his election would have been void if he had been elected and a petition presented complaining of his election. Election petitions in the case of primary elections may be withdrawn by any of the District Magistrates or the officer authorised by him. If there are more petitioners, the withdrawal petition should be made with the consent of all the petitioners. On a withdrawal petition being presented a notice thereof will be issued to all other parties by the District Magistrate fixing a date for hearing of the application. The District Magistrate would not grant such an application for withdrawal if the same has been induced by any bargain or consideration which ought not to be allowed.

On the petition being withdrawn the District Magistrate may order the petitioner to pay the costs to the respondent of such an amount as he may deem fit.

A petition abates on the death of a sole petitioner and if an election of a candidate has been procured or effected by a corrupt practice or if there was an improper acceptance or rejection of any nomination or by the improper reception or refusal of a vote or by the reception of a vote which is void. Or if the election has not been a free election in which bribery and undue influence have been used, the election of an elected candidate would be void. In inquiring into the validity of a primary election the District Magistrate would follow the same kind of rules as those contained in the Government of India Provincial Elections and Corrupt Practices Order. The Judgment of the District Magistrate will be final and it is not liable to be questioned in any court. The judgment is to declare whether an election is void or the judgment may declare the election of any candidate to be valid and also the total amount of costs payable and the persons by whom the costs are to be paid. A copy of the judgment will be forwarded to the Governor and another copy to the Returning Officer. On receipt of such a report the Returning Officer will amend the list prepared by him of the candidates elected at a primary election. The name or names of elected candidates included in the list so amended will be published in the Gazette. When the District Magistrate or the authorised officer finds that all the elections of all the elected candidates are void, then a fresh primary election would be held. The District Magistrate will record in his judgment his

findings as to corrupt practices and the persons guilty thereof, as required by the Corrupt Practices Order.

Costs awarded by the District Magistrate in hearing an election petition would be recovered by producing his order before the principal Civil Court of Original Jurisdiction, within whose jurisdiction the person liable to pay resides or does business. If the person resides within the jurisdiction of the Bombay High Court, the court competent to execute the order would be the Bombay Court of Small Causes. The Order will be executed in the same manner and by the same procedure as if it were a decree, for the payment of money.

Consequence of Primary Election being held void.—Where the election of all the candidates at a primary election is declared void at an election, the Governor acting in his discretion will call upon the members of the Scheduled castes being electors in the constituency by a notification to elect 4 candidates for the said seat at a fresh primary election and thereafter by another notification to elect a member for the purpose of filling the seat.

The same procedure would be followed on in every reconstitution of the Assembly, that is to say, on the expiration of the duration of an Assembly or on its dissolution when a General election is held. In both cases the Primary elections will be held in order to elect 4 candidates for each reserved seat in the case of the Scheduled castes. The Governor, would, if he thinks fit issue the notifications as above stated at any time not being more than 3 months prior to the date on which the duration of the Assembly would expire in the ordinary course of events. Similarly when a

primary election has been held void at an election inquiry held in, the Governor would again by a notification call upon the members of the Scheduled castes who are electors in a constituency to elect at a fresh Primary election 4 candidates for each of the reserved seats.

Primary Elections : Whether can be held with less than 4 Candidates.—It is provided by para 14(1) of the Government of India Act (Provincial Legislative Assemblies Order 1936) that a Primary Election may be proceeded with notwithstanding that less than 4 candidates stand at that Primary election, and that the remainder of the election may be proceeded with notwithstanding that by reason of a deficiency of candidates at the Primary election or by reason of the withdrawal or death of candidates elected thereat, there are or remain less than four duly elected Scheduled caste candidates for the seat.

Single vote for a voter at Primary election.—At a poll at any such Primary Election no voter will have more than one vote.

Scheduled caste members whether qualified to contest general seats.—Except in the case of Bengal a Scheduled caste member is qualified to contest a general seat although not elected at a primary election held for Scheduled castes. [See Government of India Provincial Legislative Assemblies Order, para 14(3).]

SPECIAL CONSTITUENCIES (BOMBAY AND OTHER PROVINCES)

Elections to Special Constituencies.—What is stated above refers to elections in general, but there are cer-

tain special constituencies in which elections and voting are conducted on different principles. The rules framed by the local Government vary in order to suit the special needs of each such constituency. Such special constituencies are :

- (1) European and Anglo Indian Constituencies.
- (2) Scheduled castes constituencies in which primary elections are held before final elections are held.
- (3) Commerce and Industry Constituencies.
- (4) Landholders' Constituencies.
- (5) Labour Constituencies.
- (6) University Constituencies.

The above constituencies are formed mostly in the matter of elections to Provincial Legislative Assembly.

1. *European and Anglo-Indian Constituencies.*—In the above constituencies formed for the purpose of elections to the Legislative Assembly in the Bombay City no symbols are assigned to the candidates. The Collector supplies the presiding officer with ballot boxes. The ballot paper will be in a form prescribed. Each elector voting will record his voting and deliver the ballot paper to the presiding officer. The same principle will be followed in the matter of voting in European and Anglo-Indian Presidency Constituencies, but here the Returning Officer sends the Ballot papers to the Collectors of each district in which there are electors. The Collector distributes them to the Mamlatdars and Mahalkaris within the district. On the day fixed, the polling will take place at the office of the Collector

and elsewhere at the office of the Mamlatdar or Mahalkari. The elector fills up and signs the counterfoil of the ballot paper in the presence of the attesting officer who will attest the elector's signature. The elector proceeds to the voting partition for recording his vote and there he will place a cross against the name of the candidate for whom he wishes to vote. He will then have to place the ballot paper in an envelope, close the same, and deliver it to the attesting officer. The attesting officer despatches all of them to the Returning Officer by registered post.

Postal Voting in European Constituency for Legislative Council Election.—In the matter of Legislative Council Election for a European Election Constituency, the Returning Officer is to despatch the ballot papers with counterfoils attached to each elector by registered post to the address shown in the electoral roll. The elector will have to sign the counterfoil of the ballot paper in the presence of a Gazetted Revenue or Judicial Officer or of a Magistrate or Justice of the Peace who will have to sign the certificate on the counter part. If an elector is incapacitated from blindness or any other physical cause from voting, it will be competent for him to make his declaration and to record his vote by the hand of any officer above referred to. After recording the vote the elector has to put the ballot paper in an envelope, close the same and attach counterfoil thereto. He will then have to put the envelope with counterfoil attached in another envelope and send it by registered post so as to reach the headquarters of the Returning Officer before the day appointed for the counting of votes. If the ballot paper is not received before

the day of the counting of the votes it will be rejected. The Returning Officer will not open the envelopes containing the ballot papers until the commencement of the counting of the votes. Before the counting of votes he will only examine the counterfoil of the ballot papers and if the counterfoil has not been duly filled in by the elector or not properly attested the Returning Officer may reject the ballot paper. If a European elector has lost or mislaid a ballot paper, or the same becomes spoiled, destroyed or rendered useless he may be supplied with a second ballot paper on an application which will be marked as duplicate.

Excepting for the above provisions, the powers conferred on the Polling Officer the counting of votes etc., for European and Anglo-Indian Constituency is the same as for all other constituencies.

Commerce and Industry Constituencies.—The same general provisions as regards nominations, scrutiny of nominations, deposits, withdrawals, voting, scrutiny and counting of votes, declaration of results, disposal of ballot papers, agents and election expenses and all matters in connection with an election hold good in the case of elections held in Commerce and Industry Constituencies. But there are certain exceptional provisions which may be summarised as follows :

Nomination.—Where a candidate is nominated on behalf of a firm, Hindu joint family or a Corporation, for election, no other nominee of the same firm, joint Hindu family or Corporation will be entitled to subscribe either as proposer or seconder the nomination paper of such a candidate. Similarly where a nominee of a firm, joint Hindu family or Corporation has subs-

cribed either as proposer or seconder a nomination paper, any other nominee of the same firm, joint Hindu family or Corporation will not be allowed to subscribe either as proposer or seconder the same nomination paper or any other nomination paper.

Symbols.—In the case of elections in Commerce and Industry constituencies no symbols are assigned to the candidates.

Election.—The Collector supplies a ballot box to a presiding officer who keeps the same with him. Each voter after marking the ballot paper in the voting partition places the same in the ballot box in the presence of the presiding officer. The ballot paper will be in a prescribed form and the number of the same will be printed both on the counterfoil as also on the back of the ballot paper. The method of voting is by the voter placing a cross against a name of the candidate for whom he desires to vote. Where an elector votes on a tendered ballot paper the same manner of voting as above described will apply and the voter will then deliver the same i.e., Ballot paper to the Presiding Officer.

Election Procedure as regards Landholders' Constituencies.—In the case of elections to Landholders' Constituencies also no symbols are assigned and the mode of voting is the same as for the Commerce and Industry Constituencies and the same general provisions apply as in the case of the Commerce and Industry Constituencies in the case of nominations, desposits, withdrawals, voting, declaration of results and the disposal of Ballot papers as in the case of elections in the general constituencies.

Elections in Labour Constituencies.—For purposes of elections Labour Constituencies will be divided into (a) Trade Union Constituencies and (b) non-Union Labour Constituency.

In the case of 'the Railway Unions Constituency' and 'the Trade Unions of Seamen and Dock Workers Constituency,' they will be divided into as many electoral units as there are constituent Trade Unions in the constituency and each constituency Trade Union, will form one electoral unit. But if any constituency Trade Union has less than 200 members, the Registrar may with the consent in writing of such Trade Union combine the same with any other constituency Trade Union in order to form a Electoral Unit.

Returning Officer.—The Registrar of the Trade Unions will be the Returning Officer for the purpose of the Primary election or he may appoint some other person in the service of the Crown in India to do duties of his for an electoral Unit in the matter of elections. For the purpose of Primary elections the electoral roll of each Trade Union or combination of Trade Unions as pointed out above in a constituency will be deemed to be the Electoral roll of that electoral unit.

Determination of the number of delegates.—The Registrar will determine the number of delegates to be elected on the basis of one delegate for every 200 persons included in the electoral roll of the electoral unit and notify the same to the constituency Trade Unions concerned. His decision is final not liable to be questioned in any court or otherwise. A person who is included in an electoral roll for that electoral unit is entitled to be nominated as a candidate. Any person may

be nominated as a candidate for a Primary election in an electoral unit if he is included in the electoral roll for that electoral unit. The Governor calls upon in the case of the Railway Unions Constituency or the Trade Unions of Seamen and Dockworkers Constituency, by a notification to choose at the primary election under these rules an electoral college in accordance with the provisions of para 21 of part 3 of the Assembly Order within a time to be specified in the Order and by another notification calling 'upon the constituency to elect a member for the purpose of filling a seat within such time as may be specified in that notification. The date for the taking of the poll will be fixed by the Governor.

The nomination paper will be in a prescribed form and will be supplied by the Returning Officer to an elector asking for the same. A person who is included in the electoral roll of an electoral unit and who is not disqualified for voting, may subscribe as proposer or seconder as many nomination papers as there are delegates but no more. The Returning Officer makes a summary inquiry for the scrutiny of nominations and in such an inquiry an entry in the electoral roll of a name of a person would be conclusive evidence as to his right to stand for election or to subscribe a nomination paper as a proposer or seconder unless it is proved that the candidate is disqualified under the provisions of the Act or any order or rule that the proposer or seconder is not qualified.

If the number of delegates to be nominated exceeds the number of delegates to be elected, then, the Returning Officer publishes the names of the candidates in the Gazette together with the symbols assigned to each

candidate and a poll will be taken. If however, the number of delegates nominated is equal to the number of delegates to be elected by the electoral unit, then the Returning Officer will declare all of them to be duly elected.

But if the number of candidates is less than the number of delegates to be elected, then, the Returning Officer will declare all such candidates to be elected, as delegates, and the Governor will call upon the electoral unit to elect a delegate or delegates within a time to be specified by him to supply the deficiency. If however, it fails to elect, the Governor will not be bound again to call upon the electoral unit to elect a delegate.

With regard to voting in a primary election, the same should be done in a screened compartment, by putting the voting paper in a ballot box inside the compartment, over which, the name and the symbol of the candidate will be affixed. Votes are given by ballot. No votes are given by proxy. The names and symbols of the candidate will not be printed on the ballot paper. In cases of doubt as regards the identity of an elector, the Returning Officer will have to put questions to the voter before he is supplied the ballot paper. If he refuses to answer the question, no ballot paper should be supplied to him. The provisions are the same as regards the tendered votes. The tendered ballot paper will not be counted by the Returning Officer of the electoral unit. In the case of a person who is on duty at a polling station, he will not be allowed to record his vote at that polling station.

After the elections, votes will be counted under the superintendence of the Returning Officer for the elec-

toral unit. All the ballot boxes of each candidate will be separated, numbered, and placed together. They will be opened separately. After the ballot papers in a ballot box have been examined and counted, the Returning Officer will record the number thereof in a statement. Similarly the number of valid and rejected ballot papers will be recorded separately. Ballot papers are rejected if they do not bear the official mark or if they bear any mark by which the elector can be identified. After the counting of votes, the Returning Officer will have to forthwith declare the candidates to whom the largest number of votes have been given to be elected. Next he will have to forward to the Registrar, the names of the delegates elected. After the declaration of the results the ballot papers taken out from the ballot boxes will be made up in separate parcels, sealed with the seal of the Returning Officer or such candidates or agents as may desire to affix their seal and the Returning Officer will endorse thereon in his own handwriting the names of the candidates. All the documents, Ballot papers, marked copies of electoral rolls, etc., relating to Primary Elections will have to be sent to the Registrar and they cannot be inspected or produced except under Order of a competent Court or of the Registrar or any other person authorised to hold an inquiry into a Primary Election. The said papers will be retained for one year and thereafter destroyed, subject to the direction to the contrary by the Governor.

Questioning of Primary Election of a Delegate.—The Primary Election of a delegate can be questioned only by an election petition presented against the election to the Registrar within 4 days from the date on

which the result of the Primary Election is declared by the Returning Officer for the electoral unit. If it is not presented in time it may be dismissed. If it is not so dismissed the Registrar or any person authorized therein will hold a summary inquiry into it. Such inquiry will be disposed off within 6 days counted from the expiry of the period allowed for the presentation of such petitions, or within such further period as may be sanctioned by the Governor. If the Registrar finds that the election is void on any of the grounds mentioned in Para 7, Part 3, of the Corrupt Practices Order, he shall declare such delegates as have received the largest number of votes next in order, to have been duly elected from amongst those whose elections have not been declared void. The decision of the Registrar or of the Authorising Officer will be final and shall not be liable to be questioned in any Court. The Registrar will send a copy of his decision to the Governor and amend the list of delegates.

If the number of delegates declared elected by an electoral unit is less than the number of delegates entitled to be elected, then the Governor is empowered to issue orders for a fresh Primary Election to make up the deficiency. A list of delegates will be prepared by the Registrar of all those elected in all the electoral units and published at the office of the Returning Officer. A copy of the same will be forwarded to the Government for publication in the Gazette. The list will be final and conclusive and it cannot be questioned in any Court or otherwise. This list will be deemed to be the electoral roll for the constituency for the purpose of the final election. The delegates elected at a Primary Election would

be the Electoral College for the constituency. A person nominated as a candidate at a Primary Election in a Trade Union Constituency may not lodge his return of the election expenses in respect of the said election, but if the same person is nominated as a candidate for the final election in that constituency, he will have to show in his return of election expenses for the final election, all the expenses incurred by him in respect of the Primary Election also.

At the Primary Election, the Governor calls upon the Labour Constituency to elect a member on a date not later than the 14th day after the date of the notification, and also a date for the scrutiny of nominations. The Governor also fixes and notifies the date or dates on which a poll will be taken if necessary and the dates will be notified. The nomination paper will be in the prescribed form.

In the case of a member, honorary member or official of a recognised trade union in the province and not entitled to vote to the choice of a member to fill any labour seat, the nomination paper will be accompanied by a certificate to the effect that the candidate is a member of a recognised union and that he is not in arrears with his subscription. Such a certificate will be signed by the President or Chairman or Secretary of the Union and sealed with its common seal. The production of such a certificate is conclusive evidence of the right of any person to stand for election in a labour constituency unless he is proved to have been disqualified otherwise.

In the case of a genuine manual worker the amount of deposit required at the time of the nomination paper being handed over to the Returning Officer will be Rs. 50

only in cash or in Government Securities of equal value at the market rate of the date. Such a person should be a genuine manual worker in the opinion of the Returning Officer. In the case of the Railway Unions and Seamen and Dockworker's Constituency, a delegate elected and not disqualified otherwise may subscribe as proposer or seconder as many nomination papers as there are seats to be filled but no more. At the time of actual election in Labour Constituencies, the identity of voters will be established in cases of doubt by the Polling Officer putting the necessary questions to establish the identity of the voters. Except as to the above exceptional provisions the general provisions applicable to the nominations, withdrawals, voting, counting of votes, declaration of results, disposal of Ballot papers, etc., etc., will apply in the case of Elections in Labour Constituencies also.

UNIVERSITY CONSTITUENCY

In the case of the University Constituency, Elections are held by the Returning Officer sending to each elector a Ballot paper with a counterfoil attached to it by registered post to the address shown in the electoral roll not later than 14 clear days before the date fixed for the counting of the votes. The portion of the Ballot paper which is to be filled up by the Returning Officer will be filled up by him before the Ballot paper is despatched to the voter. The Ballot paper will be in a particular form as prescribed. An election cannot be invalidated by reason that an elector has not received a Ballot paper provided that the same is shown to have been issued to him in accordance with the Rules.

The voter, on receiving the Ballot paper will have to sign the counterfoil of the Ballot paper in the pre-

sence of a Gazetted Revenue or Judicial Officer or of a Magistrate or Justice of Peace who will sign on the certificate on the counterfoil. The elector places a cross against the name of the candidate for whom he wishes to vote. If a voter is incapacitated from blindness or other physical cause he should make his declaration and record his vote by the hand of an Officer referred to above. Such an Officer will have to certify the elector's incapacity and the fact that he was requested to sign the declaration and to mark the Ballot paper for him.

After voting the elector will have to tear off the counterfoil of the Ballot paper and after putting the Ballot paper in an envelope, close the same and attach the counterfoil thereto. He will have to then put the said envelope with the counterfoil attached to it in another envelope and after closing the same will have to send the same by registered post to the Registering Officer so as to reach the headquarters office of the Returning Officer before the day appointed for the counting of the votes. If the Ballot paper is not received by the Returning Officer before the day appointed for the counting of votes it will be rejected.

A Ballot paper may be rejected by the Returning Officer if the counterfoil has not been properly attested or not duly filled by the elector. In that case the Returning Officer will endorse on both the counterfoil as well as on the envelope containing the Ballot paper the word "Rejected." If the counterfoil has been duly filled in and attested, the Returning Officer will have to detach the counterfoil and place the counterfoil and the Ballot paper in separate packets. The envelope con-

taining the Ballot paper will not be opened until the commencement of the counting of the votes.

If the original Ballot paper is lost, mislaid, spoiled, destroyed or otherwise rendered useless, the Returning Officer will on application supply a voter with a second Ballot paper signed and numbered by the Returning Officer and marked "Duplicate." In order to get a duplicate, there should be an application in writing stating the circumstances of the loss, etc., of the Ballot paper. Excepting for the above the general provision applies as regards nominations, scrutiny of nominations, deposits, counting of votes, declaration of results, disposal of Ballot papers, etc.

Election Rules of Procedure Special to Madras Province

Personal voting in Madras Legislative Assembly and Council Elections.—In Madras both in respect of the Legislative Council and the Legislative Assembly Elections there are two modes of election (1) Personal voting and (2) Postal voting. The general rule is personal voting. But in respect of certain constituencies postal voting is prescribed.

No questioning of acts done in a Court of Law.—The Madras rules for the conduct of elections for the constituencies of the Madras Legislative Council and the Madras Legislative Assembly provide that no act done or proceedings taken under or with reference to the rules framed by the Madras Government shall be called in question by means of a suit or otherwise in a Court of Law (Rule 7 of Rules of the Madras Legislative Council Elections and of the Madras Legislative Assembly).

Governor's power to order fresh Primary Elections for Scheduled castes.—For the Madras Assembly the Governor is empowered to order fresh Primary Election in the event of the election of all the candidates elected at Primary Election being declared void [Vide Rule 8(2), Madras Legislative Assembly Election Rules].

Casual vacancies in the Madras Assembly: How filled.—A casual vacancy in the Assembly by death or resignation will be ordered to be filled by the Governor by election on his calling upon the constituency to elect a person [Rule 9(1), Madras Legislative Assembly Election Rules].

Vacancy of a Scheduled caste seat.—If the vacancy caused by death or resignation is of a representative of the Scheduled castes in a constituency the Governor would call upon the constituency to elect at a Primary Election held in that constituency of all Scheduled castes entitled to vote a panel of 4 candidates for that seat and thereafter by another notification call upon the constituency to elect a person to fill the vacancy so caused within a specified time [Rule 9(2), Madras Legislative Assembly Election Rules].

Returning Officers in Madras Elections.—Rules both of the Madras Legislative Assembly and of the Council provide for the appointment of Returning Officers in each constituency and also for officers who are to perform duties subject to the control of the Returning Officers except the duty of accepting a nomination paper or of a paper withdrawing candidature or scrutinizing nominations or counting of votes. But where the

Returning Officers are unavoidably prevented from performing the same the rules provide for the persons who could be made to perform those functions too. [Madras Legislative Council Election Rules 11(1) and Madras Legislative Assembly Election Rules 11(1)].

Primary Election dates.—Date for the holding of Primary Election in case of Scheduled castes would be on a date not later than the 10th day after notification by the Governor [Madras Legislative Assembly Election Rules 12(1)].

Publication of notice of Primary Elections : Madras Scheduled castes.—Where a member of the Scheduled castes is not entitled to vote in a constituency in which he proposes to stand as a candidate his nomination paper should be accompanied by the certified copy of the entry containing his name in the electoral roll for the constituency in which he is entitled to vote [Madras Legislative Assembly Election Rules 14(2)].

This rule applies to candidates other than those standing for Primary Elections [Madras Legislative Assembly Election Rules 35(2)].

Labour candidates in the Madras Assembly.—Similarly in the case of Labour candidates the nomination paper of a member not entitled to vote in the choice of a member to fill any Labour seat will have to be accompanied by a certificate to the effect that the candidate is a member, honorary member or an official of a Trade Union and being a member who is not in arrears with his subscription and that such a Trade Union is a recognised one, signed by the President or Chairman or Secretary of the Trade Union sealed with its common

seal, the signature on such certificate being attested by a Presidency Magistrate, Taluk Magistrate, Deputy Tahsildar, or Stationary Sub-Magistrate. [Madras Legislative Assembly Election Rules 35(3)].

Nomination of Backward Tribes' candidates in Assembly.—Nomination of a candidate in the case of Backward Tribes Constituency to the Madras Legislative Assembly should be accompanied by a certificate from the Revenue Divisional Officer of the division in which the candidate resides stating that he is a member of Backward Tribes entitled to vote in the choice of a member to fill that seat.

Overlooking clerical and printing errors by Returning Officers.—In Madras while the Returning Officers are entitled to overlook printing and clerical errors they should record the interpretation they have put together with the reasons therefor [Madras Legislative Assembly Rules, 18(2) and 39(2)].

Withdrawal notice by Scheduled caste candidates for the Madras Assembly.—According to the Madras Election Rules the withdrawal of a candidate could only be made at or before 3 O'clock in the afternoon on the date succeeding that appointed by the Governor for the scrutiny of nominations [Madras Legislative Assembly Election Rules 20(1)].

Elections other than Primary Elections in Madras.—Dates for nomination will be such dates not later than 21st day after the date of notification by Governor. (Rule 32, Madras Legislative Assembly Election Rules).

Date for scrutiny.—The date for scrutiny would be not later than the 3rd day after the date fixed for nomination of candidates.

Acceptance of withdrawal from Primary Election by Returning Officer.—It is only when the Returning Officer is satisfied that the withdrawing candidate understands the purport of the notice that he could accept the notice of withdrawal [Rule 20 (1), Madras Legislative Assembly Election Rules].

Illness of withdrawing candidate.—In Madras it is further provided that if a candidate who proposes to withdraw is too ill to attend in person he will be exempted from appearing in person on production of a certificate from a Village Munsiff or an Officer of a higher grade in the Revenue Department. In such a case the proposer or seconder could deliver the note.

Eight classes of constituencies for Madras Legislative Assembly Elections: Constituencies in Madras fall under these 8 classes.—(1) Territorial Constituencies other than Women's Constituencies, *i.e.*, General, Muhammadan, Anglo Indian, European, Indian Christian Constituencies. (2) Territorial Constituencies being Women's Constituencies. (3) Backward areas and tribes. (4) Commerce and Industry special. (5) Planting special. (6) Landholders special. (7) Labour special. (8) University Special Constituencies. A person is not entitled to vote in more than one constituency falling under any one class specified above. An elector entitled to vote in any constituency falling under one class is not by reason only of the fact precluded from voting in a constituency falling under any class. (See Madras Legislative Assembly Election Rules 65). Except as men-

tioned herein every person whose name is found on the electoral roll will be entitled to be supplied with a Ballot paper (Rule 65, Explanations 1, 2 and 3, Madras Legislative Assembly Election Rules).

The Madras Legislative Assembly Election Rules provide that in a constituency in which a seat is reserved for a representative of the Scheduled caste candidates the deposit of such a caste candidate shall not be forfeited, [See Rules 43, 4(1)] and the deposit of any other candidate shall not be forfeited unless he fails to obtain $\frac{1}{8}$ of the total number of votes polled by all the candidates other than the Scheduled caste candidates [Rule 4(11)].

Use of colours in Madras for candidates.—In the case of personal vote constituencies the distinctive colour assigned to him for the purpose of the Ballot will be noted along with the serial number (Rule 47, Madras Legislative Assembly Election Rules and Madras Legislative Council Election Rules 27).

Death of candidate after nomination.—No fresh nomination will be necessary in the case of a candidate who stood nominated at the time of countermanding of the poll; it is not further necessary to hold another election (See Rule 28, Madras Legislative Council Election Rules, Madras). This rule is applicable to the Primary Elections so that if a candidate dies before final election no fresh nominations are necessary in the above circumstances (See Rule 48, Madras Legislative Assembly Rules).

Deposits in Madras Elections.—Deposits by candidates may be made in cash or in Government promis-

sory notes of equivalent value. Returning Officers may accept treasury receipts in lieu of cash when candidate chooses to pay direct into treasury.

Deposits by Backward tribes and Labour candidates will be Rs. 50 in Madras.

A Scheduled caste candidate elected at a Primary Election will not be called upon to make a deposit again. The deposit made prior to Primary Election would suffice [Rule 43(2), Madras Legislative Assembly Election Rules].

The sum could be deposited on or before the date appointed for nominations of candidates and not at or before the time of delivery of nomination papers as in Madras so that nomination papers may be lodged first and deposit made thereafter upto the time of nominations. (Rule 22, Madras Legislative Assembly Election Rules).

Return of deposit in cash of candidate elected in Primary Elections.—This will be returned after the publication of the result of the final election whether the candidate is or is not elected at the final election. [See Rule 23(4), Madras Legislative Assembly Election Rules].

Assistance to incapacitated voters.—Bombay Election Rules provide that assistance should be given to any elector who is by reason of infirmity or illiteracy unable to vote in the manner prescribed (see Rule 30, both of the Assembly and the Council Rules, Bombay). In Madras this has been more completely explained. The Presiding Officer will have to ascertain from such an incapacitated voter for whom he wishes to vote and

shall in the presence of any candidate or polling agent present, place the Ballot paper in the box bearing the serial number and the colour assigned to the candidate for whom he wishes to vote. [Rule 64 (1), Madras Legislative Assembly Election Rules and 44 (1), Madras Legislative Council Election Rules]. In such a case a note should be taken on the counterfoil by the Presiding Officer of the reason why it was so dealt with.

Colours to candidates in Madras.—Ballot boxes will bear the colour assigned to candidates. (Madras Legislative Assembly Election Rules 30).

Women voters in Madras.—Separate compartments and separate entrances and exits will be provided for women electors both in respect of the Assembly and the Legislative Council Elections, if sufficient number of women suitable and willing to act as Presiding and Polling Officers, is available. (Madras Legislative Assembly Election Rules 37 and 58 and Rule 38, Madras Legislative Election Rules).

Voting in Madras.—According to Madras Election Rules, the Returning Officer will provide a sufficient number of envelopes bearing the distinctive colours assigned to candidates together with the necessary outer covers. The box of each candidate has to bear serial number and the distinctive colour or colours assigned to a candidate. [Madras Legislative Council Election Rules 39 and Madras Legislative Assembly Election Rules 59].

Single and multiple votes in Madras.—Elections for constituencies in which more than 1 seat has to be filled the voter will be given as many Ballot papers as there

are seats and the Presiding and Polling Officer will explain to the voter that he may place all the Ballot papers in the box of one candidate or distribute them as he thinks fit and place them in different boxes.

Where at elections for constituencies in which not more than one seat has to be filled a voter will be given a Ballot paper which may be placed in boxes bearing serial number and colour assigned to the candidate for whom he desires to vote. [Madras Legislative Council Election Rules 42 and Madras Legislative Assembly Election Rules 62(1) and Rule 62(2)].

An application for duplicate for Ballot papers.—According to Madras Rules an applicant for a duplicate of a Ballot paper has to sign a declaration to the effect that he has not received his ballot and other connected papers or that they were spoiled or lost before a Presidency Magistrate, Taluk Magistrate, Deputy Tahsildar, or Stationary Sub-Magistrate having jurisdiction and identified before such officer by two witnesses if the applicant is not personally known to the officer or identified by village officers. The officer before whom the electors sign the declaration will have to forward it himself to the Returning Officer. [Madras Legislative Council Election Rules 62(2) and Madras Legislative Assembly Election Rules 82(2)].

Prosecution for personation in Madras.—The Returning Officer in Madras after instituting such inquiries as may be necessary will obtain sanction of the Local Government under Sec. 196 of the Criminal Procedure Code to prosecute the person or persons whom he believes to be guilty of the offence of personation. The sanction can be obtained from the Commissioner of

Police in Madras and from the District Magistrate elsewhere. If it is proved that the offence of personation has not been proved he will decide whether the whole or part of the deposit will be declared forfeited to the Government. In coming to a decision the Returning Officer will be guided by the facts and conclusions recorded at the trial. [Madras Legislative Council Election Rules 67 (6) and Madras Legislative Assembly Election Rules 47 (6)].

Deposit for challenged votes.—In Madras after the deposit is made the Presiding Officer has to obtain a written statement from the candidate or agent in a prescribed form and signed by him and the same will have to be attested by 2 witnesses in the presence of the Presiding Officer.

Declaration of result after counting of votes.—In Madras the Scheduled caste representative to whom largest number of votes have been given will be declared elected first. (Rule 88, Madras Legislative Assembly Election Rules).

Exercise of casting vote by lot in Madras : Equality of votes between candidates at an election.—Where an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of the candidates to be declared elected the determination of the person or persons to whom such additional vote will be deemed to have been given will be made by lot to be drawn in the presence of the Returning Officer in such a manner as he may determine [Madras Legislative Assembly Rules, 31 (4), 89]. By Rule 69, the same procedure of giving casting vote by lot is prescribed in respect of the Madras Legislative Council. This rule is

made common to Primary Elections, General Elections of the Assembly and also of the Legislative Council in Madras.

Postal voting in Madras.—Postal voting is prescribed in the case of European, Anglo Indian, Indian Landholders, University and Madras Planters Constituencies in the matter of the Madras Legislative Assembly Elections (Rule 74, Madras Legislative Assembly Election Rules), in the Madras Legislative Council Elections to Muhamadan, European and Indian Christian Constituencies. (Rule 54, Madras Legislative Council Election Rules).

Despatch of Ballot papers will be by registered post, acknowledgment due to the address in the Electoral Roll [Rule 55(1)].

Application for change of address should be made through a Presiding or Taluk Magistrate, Deputy Tahsildar or Stationary Sub-Magistrate, i.e., the elector should sign before that official an application to that effect. The applicant should be identified by two witnesses who should sign the application or the testimony of the village officer would be accepted as sufficient. The officer before whom such an application is signed, should forward the same to the Returning Officer. [Madras Legislative Assembly Election Rules 75(2) and Madras Legislative Council Election Rules 55(2)].

The Returning Officer sends a cover addressed to himself with a Ballot paper and a declaration form. The elector encloses the envelope and the declaration paper in the cover after marking the Ballot paper with his vote and send the cover by registered post. Covers sent

by unregistered post will be rejected. (Madras Legislative Council Election Rules 60 and Madras Legislative Assembly Rules 80).

Incapacity from blindness or physical cause.—A voter incapacitated by blindness or physical cause could record his vote by the hand of any officer such as a stipendiary Magistrate other than Village Magistrate, Judges of the Court of Small Causes, Madras, City Civil Court, Madras, Sub-Judges, District Munsiffs, District Registrars and Sub-Registrars. Such an officer is to mark the Ballot paper in the presence of the elector and if the incapacity is one due to blindness, in the presence of another person as well and shall on the declaration paper certify the incapacity and attest the fact of the request to mark the Ballot paper for him. [Madras Legislative Council Election Rules 61(1) and Madras Legislative Assembly Election Rules 81(1)].

When Scheduled caste seat unfilled.—Once called upon by the Governor if a constituency fails to elect a panel of candidates, the Governor will not be bound to call upon the Scheduled caste electors to elect a panel of candidates and unless a member of the Scheduled castes not elected at a Primary Election is successful at the final election, the reserved seat will remain unfilled until such time as the Governor thinks fit. (Rule 29, Madras Legislative Assembly Election Rules).

Destruction of nomination papers.—In the case of Madras Legislative Assembly will be after 5 years [Madras Legislative Assembly Election Rules 96(2)] and in the case of the Madras Legislative Council Elections after 9 years unless otherwise ordered [See Madras Legislative Council Election Rules 76(2)].

Election Rules of Procedure Special to Assam Province

Nominations in tea garden labour constituency.—In the tea garden labour constituency in Assam the nomination paper will contain a declaration in writing specifying the qualifying tribe in Assam [Assam Assembly Electoral Rules, 1936, Rule 2(3), Part IV].

Symbols.—The nomination paper in the case of Assam Assembly candidates would contain a declaration in writing subscribed by the candidate that he has selected a particular symbol from a given list. But no symbols are assigned in the case of the Europeans, the European and Indian Planting, the European and Indian Commerce and Industry constituencies [Part IV, Rule 2(6) Assam Assembly Electoral Rules, 1936]. They are usually allocated in conformity as far as possible with the wishes of candidates and if necessary by lot. Rule 3(4) (a) (i), Part IV, Assembly Electoral Rules].

Withdrawal of candidature by telegram.—In Assam a telegram may be provisionally accepted as a notice in writing withdrawing the candidature. But the same should be followed by a notice in writing. (See Assam Legislative Assembly Rules).

Deposits.—In the case of the Assam Assembly ordinary candidates the deposit is Rs. 250. In the case of a candidate for a backward tribal area constituency it is Rs. 100 and in the case of a genuine manual worker in the case of a tea garden labour constituency it is Rs. 50. (Vide rule 3, part IV, Assam Assembly Electoral Rules). The deposit in the case of Assam Legislative Council candidates is Rs. 500.

Forfeiture of deposits in the case of Assam Assembly candidates.—Candidates other than Scheduled caste candidates who fail to poll $\frac{1}{8}$ of the total number of votes polled or if such constituency contains more than 2 seats $\frac{1}{8}$ of the number of votes divided by the number of members to be elected, the deposit will be forfeited. Scheduled caste candidate who has been elected to the panel of the Primary Election will not forfeit his deposit in a constituency where a seat is reserved for a Scheduled caste candidate at the final election and the deposit of any other candidate will be forfeited if he fails to secure $\frac{1}{8}$ of the total number of votes polled other than the Scheduled caste candidates who were elected at the panel at the Primary election. [See rule 3 (3) part 4, Assam Assembly Rules, 1936.] In the case of the Assam Legislative Council candidates if the number of votes polled by him does not exceed $\frac{1}{8}$ of the total number of votes polled, the deposit will be forfeited [Rule 2 (3), part 3, Assam Legislative Council Rules, 1936.]

Female voters.—In Assam Assembly Elections the Women's Shillong constituency the presiding officers and the polling officers will be women as far as possible. [5 (3) (4) Assam Assembly Rules, 1936.] For the purpose of identification the husband or near relative of the woman may accompany her.

Identification of voters in Assam Assembly elections.—A suitable village or municipal officer would sit in close proximity to polling officer to assist him in identifying voters (Rule 10, Part 5, Assam Assembly Electoral Rules, 1936.)

Recording vote in Assam Assembly elections.—The voter on receiving Ballot paper will show the official mark thereon to the presiding officer or polling officer and proceed to the polling compartment. (Rule 11. Assam Assembly Electoral Rules.)

Challenged votes in Assam.—In the case of challenged votes, the deposit in the Assam Assembly Elections is Rs. 20 as a token that the challenge has been made in good faith [Rule 16(1), Part 5, Assembly Electoral Rules, Assam 1936].

Recounting of votes in Assam Assembly Elections.—Frivolous request. Upon the application of any candidate or his election agent, a recount may be made before the Returning Officer but he may reject an application as may appears to him to be frivolous (Assam Assembly Rules 4, part 6, 1936).

Postal voting in respect of Assam Assembly Elections.—In the case of European Planting and Commerce and Industry Constituencies the voting is by post (rule 2, part 7, Assam Assembly Electoral Rules, 1936). Similarly in the case of Assam Legislative Council Elections voting will also be by post (see part 4, Assam Legislative Council Elections Rules, 1936.)

Return of Primary election expenses in Assam.—The return of primary election expenses of persons who were not elected at the primary election to the panel of candidates will have to be lodged with the Returning Officer within 35 days from the date of the declaration of the result of the Primary Election and the return of Primary election expenses of persons duly elected to such a panel together with the expenses of final election

will have to be lodged within 35 days from the publication of the result of final election (rule 3, part 8, Assam Assembly Electoral Rules).

Return of Election expenses.—The return of election expenses in general will be lodged within 35 days from the date of the publication of the election in the Gazette [Rule 8(1), Assam Assembly Electoral Rules, part 8].

Election Petition : Primary Elections in Assam.—Period for the presentation of election petition to set aside Primary election is within 2 days from the date on which the result of the Primary election is declared by the Returning Officer [4 (i), Assam Assembly Electoral Rules, part 8.] on deposit of Rs. 250 [Rule 7].

Election Rules of Procedure Special to Bihar

Returning Officer in Bihar.—In Bihar the Deputy Secretary to Government in the Legislative Department is the Returning Officer and the District Magistrates and the Assistant Secretary to the Board of Revenue perform all or any of the Returning Officer's functions (part 2, rule 12, Bihar Legislative Council Electoral Rules). With reference to the Assembly elections, as regards the landholders' constituency in Bihar, the Commissioner of the division in which the constituency lies, in the General, Muhammadan, Labour and Women's constituencies, any Magistrate of the 1st class and in any other constituency the Assistant Secretary to the Board of Revenue, Bihar would be the Returning Officers.

Forfeiture of deposit.—The deposit made in respect of a candidate who is not elected will not be forfeited to the Government if the number of votes does not

exceed $1/8$ of the total number of votes polled [rule 16(a), Bihar Legislative Council and Assembly Election Rules]. In Bihar Assembly elections the backward class candidate forfeits deposit if the number of votes polled does not exceed $1/12$ of the total number of votes polled by him.

Bihar Legislative Council, Postal Voting.—The system of voting is through post. The Returning Officer sends by post 15 days before poll is taken, a declaration paper and a ballot paper to each voter. The elector has to sign the declaration in the presence of an attesting officer who is to attest his signature [Bihar Council Electoral Rules 27(1)]. The voter may at his option instead of sending the Ballot paper by post deposit it in a Ballot box (rule 27, Bihar Council Electoral Rules, 1936) provided for the purpose at the office of the Returning Officer. Postal voting is prescribed in the case of European, Anglo-Indian, Landholders, Indian Christian, Commerce and Industry, Mining and Planting and University constituencies in Bihar Assembly elections (see rule 69, Bihar Assembly Election Rules, 1936). But in the case of the Bihar Planters' constituency the declaration will not be required to be attested.

Bihar Legislative Assembly Elections : Nomination of Scheduled caste candidates.—The nomination of a Scheduled caste candidate who is not entitled to vote in the constituency in which the Primary election is held will have to be accompanied by the certified copy of the entry containing his name in the electoral roll for the constituency in which he is entitled to vote, [part 4, rule 14(4), Bihar Assembly Electoral Rules, 1936.]

Nomination for territorial constituency by non-voter in that constituency.—A nomination paper delivered by a candidate not entitled to vote in a territorial constituency will have to be accompanied by a certified copy of the entry containing his name in the electoral roll for the constituency in which he is entitled to vote.

Candidate for labour constituency.—A candidate for the labour constituency in Bihar has to submit with his nomination paper a certificate that he is a member, honorary member or an official of a Trade Union.

A backward class candidate in Bihar has to submit with his nomination a certificate from the sub-divisional officer of the sub-division in which the candidate resides.

Assignment of colours to candidates.—In Bihar Assembly elections the Returning Officer assigns to each candidate a separate serial number and a colour.

Deposit in regard to challenged votes.—With reference to challenged votes it must be noted that some provinces do not insist upon the same as in the case of Bihar Assembly Elections.

Declaration of results.—Assembly elections: In Bihar where a poll is taken to fill 2 or more seats in a constituency and one of the seats is reserved for Scheduled castes or backward castes representative, the Returning Officer will have to first declare that one of the qualified candidates to whom the largest number of valid votes has been given to be duly elected to fill the reserved seat and shall then declare the candidate or candidates to whom out of all the remaining candidates the largest number of valid votes has been given to be

duly elected to the non-reserved seat or seats (Bihar Assembly Electoral Rules 65.)

Agents and Returns.—In Bihar every return will have to bear a non-judicial stamp or stamps of the value of Re. 1 both in the Assembly and Council Elections.

ELECTIONS BY MEMBERS OF BIHAR LEGISLATIVE ASSEMBLY TO FILL SEATS IN THE LEGISLATIVE COUNCIL

The mode of conducting election by the members of the Bihar Legislative Assembly to fill seats in the Legislative Council are contained in part 4 of the Supplement to the Bihar Legislative Council Electoral Manual, 1936.

The following definitions are to be noted of the words used in connection with these elections: “continuing candidate” means a candidate not elected and not excluded from the poll at any given time; “first preference” means the figure 1 placed opposite the name of any candidate; “second preference” means the figure 2 similarly placed and so on; “exhausted paper” means a Ballot paper on which no further preference is recorded for a continuing candidate or on which the name of the candidate next in order of preference whether continuing or not is marked (a) by the same figure as the name of some candidate or (b) by a figure not following consecutively on some other figure on the Ballot paper or (c) by two or more figures provided that the failure of a Counter to mark every preference correctly on his Ballot paper shall not invalidate the whole of his preferences and the Ballot paper

shall only be deemed to be exhausted when the wrongly marked preference is reached.

“Exhausted paper” means a Ballot paper on which a further valid preference is recorded for a continuing candidate; “Original vote” in regard to any candidate means a vote derived from a Ballot paper on which a first preference is recorded for such candidate. “Transferred vote” in regard to any candidate means a vote the value or part of the value of which is credited to such candidate and which is derived from a Ballot paper on which a second or subsequent vote is recorded for such candidate; “Surplus” means the number by which the value of the votes of any candidate original and transferred exceeds the quota as defined in rule 64.

After the Governor fixes the dates for the nomination of candidates and the date for a poll if necessary, the same will be notified.

A person may be nominated as a candidate for a seat to be filled by a person elected by the members of the Bihar Legislative Assembly if he is not disqualified from being chosen to fill that seat under the Act, or any order or any rule made. The Returning Officer has to obtain from the Secretary to the Bihar Legislative Assembly a certified list containing the names and the postal addresses of all the members of the Assembly. Next the nomination papers will be delivered to the Returning Officer in the same way as those in other cases. The rules for the filing of nomination papers and for withdrawal of candidates are also the same as in the case of nomination of candidates in elections in general.

Deposit.—The deposit required to be made by a candidate is the sum of Rs. 500 in cash or in Government Promissory notes of equal value at the market rate of the day.

Forfeiture of deposit.—The deposit made in respect of a candidate who is not elected will be forfeited if the number of votes polled by him does not exceed one eighth of the total number of votes polled at an election in which only one seat is to be filled or one twentieth of the total number of votes polled at an election in which more seats than one are to be filled. But in the case of the general election held for the purpose of constituting the Legislative Council under the Act such deposit will only be forfeited if the number of votes polled by the candidate does not exceed one-sixtieth of the total number of votes polled.

Scrutiny of nominations.—After the deposit on nominations the next step is the scrutiny of nominations for which the same rules as in the other cases hold good. But amongst the grounds for the refusal of nomination may be noted particularly the ground that in the case of a candidate who is not the person whose electoral number is given in the nomination paper as the number of such candidate or as the case may be that he is not a member of the Legislative Assembly. After the scrutiny of nominations a list of duly nominated candidates will be prepared and the next step is voting.

Postal voting.—The method of voting is by post. The Returning Officer will send by registered post a declaration paper and a Ballot paper to each member of the Bihar Legislative Assembly to the address given

in the list certified by the Secretary of the Bihar Legislative Assembly, of the members of the Bihar Legislative Assembly.

Each elector will have one vote only. Upon the receipt of the voting papers, a voter if he desires to vote in the election will have to first sign the declaration in the presence of an Attesting Officer who will attest the signature and thereafter record his vote on the Ballot paper in the following manner: (a) He will have to place the figure 1 in the square opposite the name of the candidate for whom he desires to vote; and (b) he may in addition place the figure 2 or the figures 2 and 3 or 2, 3, 4, and so on in the squares opposite the names of any or all of the other candidates in the order of his preference. Any Gazetted Officer of Government may attest a declaration made as required above. The Ballot papers will have to be either sent to the Returning Officer either by post or deposited in a Ballot box provided for the purpose.

Counting of votes.—The provisions for the counting of the votes are contained in the supplement to the Bihar Legislative Council Electoral Manual, 1936, 59 to 73.

With regard to the counting of the votes the following special points are to be noted. A Ballot paper will be rejected besides on account of reasons for which the same will be rejected if the figure 1 is not marked there-

on or the figure is marked thereon opposite the names of more candidates than one; or the figure 1 and some other figure are marked thereon opposite the name of the same candidate. The Ballot papers will be reject-

ed for any of the other reasons for which they will be rejected in other provinces.

The Returning Officer will assign to each valid Ballot paper a value of one hundred (b) disregard all fractions and ignore all preferences recorded for candidates already elected or excluded from the poll. The Returning Officer will separate the valid Ballot papers into parcels according to the first preferences recorded for each candidate and shall count the number of papers in each parcel.

The Returning Officer will then divide the total value of the paper in all the parcels by a number exceeding by one the number of seats to be filled and the result increased by one will be the number sufficient to secure the return of a candidate. The same will be called the quota.

If at any time a number of candidates equal to the number of seats to be filled have obtained the quota such candidates will be treated as elected and no further steps will be taken to count the votes. The rest of the rules for counting of votes from 65 onwards agree as follows :—

65(1) Any candidate the value of whose parcel on the first preferences being counted is equal to or greater than the quota shall be treated as elected. (2) If the value of the papers in any such parcel is equal to the quota the papers shall be set aside as finally dealt with. (3) If the value of the papers in any such parcel is greater than the quota the surplus shall be transferred to continuing candidates indicated on the Ballot papers

as next in the order of the voters' preference in the manner prescribed in rule 66.

66(1) If and whenever as the result of any operation prescribed by these rules a candidate has a surplus that surplus shall be transferred in accordance with the provisions of this rule. (2) If more than one candidate has a surplus the largest surplus shall be dealt with first and the others in order of magnitude; provided that every surplus arising on the first count of votes shall be dealt with before those arising on the second count and so on. (3) Where two or more surpluses are equal the Returning Officer shall decide as hereinafter provided in rule 71 which shall first be dealt with. (4) (a) If the surplus of any candidate to be transferred arises from original voter only the Returning Officer shall examine all the papers in the parcel belonging to the candidate whose surplus is to be transferred and divide the unexhausted papers into sub-parcels according to the next preferences recorded thereon. He shall also make a separate sub-paragraph of the exhausted papers. (b) He shall ascertain the value of the papers in each sub-paragraph and of all the unexhausted papers. (c) If the value of the unexhausted papers is equal to or less than the surplus he shall transfer all the unexhausted papers at the value at which they were received by the candidate whose surplus is being transferred. (d) If the value of the unexhausted papers is greater than the surplus he shall transfer the sub-parcels of unexhausted papers and the value at which each paper shall be transferred shall be ascertained by dividing the surplus by the total number of unexhausted papers. (5) If the surplus of any candidate to be transferred arises from

transferred as well as original votes the Returning Officer shall examine all the papers in the sub-parcel last transferred to the candidate and divide the unexhausted papers into sub-parcels according to the next preferences recorded thereon. He shall thereupon deal with the sub-parcels in the same manner as is provided in the case of the sub-parcels referred to in clause (4). (6) The papers transferred to each candidate shall be added in the form of a sub-parcel to the papers already belonging to each candidate. (7) All papers in the parcel or sub-parcel of an elected candidate not transferred under this rule shall be set aside as finally dealt with.

67(1) If after all surpluses have been transferred in accordance with the provisions of rule 66 the number of candidates who have obtained the quota is less than the number of seats to be filled the Returning Officer shall exclude from the poll the candidate lowest on the poll and shall distribute his unexhausted papers among the continuing candidates according to next preferences recorded thereon. Any exhausted papers shall be set aside as finally dealt with. (2) The papers containing original votes of an excluded candidate shall first be transferred, the transfer value of each paper being one hundred. (3) The papers containing transferred votes of an excluded candidate shall then be transferred in the order of the transfers in which and at the value at which he obtained them. (4) Each of such transfers shall be deemed to be a separate transfer. (5) The process directed by this rule shall be repeated on the successive exclusions one after another of the candidates lowest on the poll until the last vacancy is filled either by the election of a candidate with the quota or as hereinafter provided.

68 If as a result of a transfer of papers under these rules the value of the votes obtained by a candidate is equal to or greater than the quota the transfer then proceeding shall be completed but no further papers shall be transferred to him.

69 (1) If after the completion of any transfer under these rules the value of the votes of any candidate is equal to or greater than the quota he shall be treated as elected. (2) If the value of the votes of any such candidate is equal to the quota the whole of the papers on which such votes are recorded shall be set aside as finally dealt with. (3) If the value of the votes of any such candidate is greater than the quota the surplus shall thereupon be distributed in the manner hereinbefore provided before the exclusion of any other candidate.

70 (1) When the number of continuing candidates is reduced to the number of vacancies remaining unfilled the continuing candidates shall be treated as elected. (2) When only one vacancy remains unfilled and the value of the votes of some one continuing candidate exceeds the total value of all the votes of the other continuing candidates together with any surplus not transferred that candidate shall be treated as elected. (3) When only one vacancy remains unfilled and there are only two continuing candidates and those two candidates have each the same value of votes and no surplus remains capable of transfer, one candidate shall be excluded under rule 71 and the other shall be treated as elected.

71 If when there is more than one surplus to distribute two or more surpluses are equal or if at any

time it becomes necessary to exclude a candidate and two or more candidates have the same value of votes and are lowest on the poll regard shall be had to the original votes of each candidate and the candidate for whom fewest original votes are recorded shall have his surplus first distributed or shall be first excluded as the case may be. If the value of their original votes are equal the Returning Officer shall decide by lot which candidate shall have his surplus distributed or excluded.

After the counting of the votes the Returning Officer will declare the name or names of the duly elected candidate or candidates. He then prepares a return setting forth the names of the candidates, the number of valid votes polled by each one of them as first preferences and the names of the candidates elected etc.

Election Rules of Procedure Special to N.W.F.P.

The North-West Frontier Province.—Officers specified as subject to the control of the Returning Officers and performing all or any of their functions are not allowed to perform any of the functions of a Returning Officer which relate to the acceptance of a nomination paper or to the scrutiny of nominations or to the counting of votes unless the Returning Officer is unavoidably prevented from performing the same (rule 10, N.W.F.P. Legislative Assembly Electoral Elections and Election Petitions Rules, 1936.)

Forfeiture of deposit.—If the number of votes polled by a candidate does not exceed $1/8$ of the total number of votes polled, the deposit will be forfeited to the Government (rule 26, N.W.F.P.)

Overlooking clerical or printing errors by Returning Officer, rule 29 (same as in Madras).

Postponement of scrutiny, N.W.F.P.—If the scrutiny of nominations is not possible on the day appointed it may be done on the following day or if the following day is a holiday on the succeeding day (rule 30.)

Separate polling stations for women.—Rule 49 as in Madras for Assembly. N.W.F.P.

Deposit for challenged votes in N.W.F.P. Assembly elections is Rs. 20 (Rule 60, N.W.F.P.).

Postal voting in the case of Landholders' constituency, N.W.F.P.—The declaration is to be signed before a Justice of Peace, Magistrate or Civil Judge who are to certify that the elector has signed the covering letter in his presence. The Ballot paper will have to be put in a cover and closed and the closed cover inserted in another cover along with the declaration in a larger cover and sent to the Returning Officer. The general provisions as to counting of votes etc., apply in the case of votes recorded in this manner.

Election Rules of Procedure Special to the Punjab

Elections in the Punjab : Dates for the scrutiny of nominations in the Punjab.—The date for the scrutiny of nominations will not be later than the seventh day after the day appointed for the nomination of candidates (Chapter II (b)).

Labour candidate in the Punjab.—Nomination paper of a labour candidate who is a member, honorary mem-

ber or official of a recognised trade Union will have to be accompanied by a certificate signed by the president or Chairman or Secretary of his union sealed with the common seal of the Union and the signature thereon shall be attested by a Magistrate.

Scheduled caste candidates in the Punjab.—Special provision for the withdrawal of Scheduled caste candidates from final election is made whereby a member of the Scheduled castes who has been elected as one of the four candidates may withdraw his candidature at any time between the close of the Poll of the Primary election upto the afternoon of the day fixed for the withdrawal of their candidature by other candidates for election by the same constituency or at any time upto the day on which the result of the Primary election has been declared by the Returning Officer whichever is the later (Chapter III, rule 8).

Deposits in the Punjab: Labour candidate.—A candidate for a labour constituency who is neither an honorary member nor an official of the North Western Railway Union or of a recognised Trade Union operating in the province will be Rs. 50. (Chapter IV, Rule 1).

Deposits in the Punjab in the case of Scheduled caste candidates would be Rs. 50. (Chapter IV, Rule 2, Punjab Assembly Electoral Rules).

Forfeiture of deposits of Scheduled caste candidates.—Deposits made by Scheduled caste candidates would be forfeited if the votes polled by him do not exceed $\frac{1}{4}$ of the least number of votes polled by a candidate who has been successful at a Primary Election.

Section 14 of the Indian Election offences and inquiries Act.—14 (a) Every officer, clerk, agent or other person who performs any duty in connection with the recording of votes at an election shall maintain and aid in maintaining the secrecy of voting and shall not (except for some purposes authorised by or under any law) communicate to any person any information calculated to violate such secrecy. (b) Any person who wilfully acts in contravention of the provision of this section shall be punished with imprisonment of either description for a term not exceeding 3 months or fine or with both.

Tendered Ballot papers in the Punjab.—Tendered Ballot papers in the Punjab will be of a colour different from the other Ballot papers and instead of being put into Ballot box are given to the Presiding Officer. (Chapter VI, Rule 20, Punjab Electoral Rolls Rules).

Postal voting in the Punjab.—Voting in European, Anglo Indian, Landholders, Commerce and Industry and University constituencies will be by post. The Returning Officer will, not less than 15 days previous to the date appointed by the Governor for counting of votes forward to the elector a Ballot paper. The Ballot paper and the covering letter will have to be sent to the Returning Officer. The covering letter will have to be sent countersigned by Returning Officer, Justice of Peace, Magistrate etc., and bear a certificate that the elector signed the covering letter in his presence.

Election returns in the Punjab.—The time limit for submitting election returns is 35 days from the date of publication of the result of the election in Punjab Gazette.

Primary election disputes in the Punjab held in the case of Scheduled castes.—Petitions in the Punjab are presented to either District Magistrates or to Commissioners of the division in which the districts are situate. (Part E, Chapter II, Punjab Electoral Rules, Rule 6).

Succession of Enquiring Officers in case of Primary Elections.—If the District Magistrate or the Commissioner is for any reason beyond his control unable to complete the inquiry, his successor is empowered to continue the inquiry and it will not be necessary to re-examine those witnesses who have been already examined and discharged. (Part E, Chapter II, Rule 14, The Punjab Assembly Electoral Rules).

Final Elections in the Punjab.—Final elections could go on in the Punjab in the case of Scheduled caste candidates, even if the number of persons elected at Primary elections is reduced to less than 4 on account of a successful election petition and to set aside the Primary election.

Election Rules of Procedure Special to Sind Province

Deposit on nomination by genuine manual worker in Sind is Rs. 50, if in the opinion of the Returning Officer he is a genuine manual worker (Rule 57, Sind Legislative Assembly Election Rules, 1936).

Nomination of candidates.—According to the Sind Legislative Assembly Electoral Rules the production of a certified copy of an entry made in the electoral roll of any constituency will be conclusive evidence of the right of any elector to stand for election. [See Rule 14(2)].

Polling stations for women in Sind.—The Sind Legislative Assembly electoral rules prescribe for separate polling stations for women if a sufficient number of suitable and willing women to act as presiding and polling officers is available (Sind Legislative Assembly Electoral Rules, Part II, 20, (vi)).

Overlooking errors by a Presiding Officer in Sind.—A Presiding Officer in Sind may overlook merely printing errors but he has to record his reasons for doing so and the interpretation he has adopted. (Sind Legislative Assembly Electoral Rules, Part II, 28 (2)).

Challenged votes, deposit.—According to Sind Electoral Rules (Assembly) no deposit is mentioned in the matter of challenged votes as in Bombay in Part II, Rule 34.

Voting in Sind European constituency.—According to the Sind Legislative Assembly Electoral Rules, 1936, no symbols are assigned in European Karachi City constituency. The elector places the Ballot paper in the Ballot box in the presence of the Presiding Officer, Part 3, Sind Legislative Assembly Electoral Rules).

In the European (Sind) constituency also no symbols are assigned. The Ballot papers are sent to the Collector of each district. The Collector distributes to Mukhtiarkars and Mahalkaris within the district. The polling would take place at the office of the Collector or at the office of the Mukhtiarkar or Mahalkari. Each voter will have to sign the counterfoil attached to the Ballot paper in the presence of the Attesting Officer who will attest the elector's signature. The elector then goes to the voting compartment to mark the Ballot paper.

Thereafter he has to place the Ballot paper in an envelope, close the same and deliver it to the Attesting Officer who despatches the same to the Returning Officer.

An Attesting Officer will be a Collector at the headquarters of the District or such officer as the Government may authorise; elsewhere the Mukhtiarkar or Mahalkari authorised by the Governor. [Part III, Sind Legislative Assembly Electoral Rules (40)].

Voting in labour constituency in Sind.—A candidate who is honorary member or official of a Trade Union but not a voter has to submit a certificate signed by the President or Chairman or Secretary to such Union that he is a member of a recognised Union etc.

Such certificate and the production of a certified copy of an entry in the list of recognised Trade Unions will be conclusive evidence of the right of such a candidate to stand for election. (Sind Legislative Assembly Election Rules 56).

RULES FOR CONDUCT OF ELECTIONS TO THE PROVINCIAL LEGISLATURES: THE UNITED PROVINCES

Deposit on nomination.—The deposit on nomination required in the case of a candidate seeking election to the Legislative Assembly is Rs. 250. Each candidate has to enclose with the nomination paper a Government treasury receipt (chalan) showing that a deposit of Rupees two hundred and fifty has been made by him in the treasury. The deposit in the case of a Scheduled or Labour Constituency is Rs. 50. (United Province Legislative Assembly Rules 5).

In the case of Elections to the Legislative Council, U. P., the deposit required to be made is the sum of Rs. 500. (Legislative Council Electoral Rules 5(i)).

Forfeiture of deposit.—In the case of the U.P. Legislative Assembly Elections (a) the deposit of a Scheduled caste candidate will not be forfeited. (b) In the case of the deposit of any other candidate it will not be forfeited unless he fails to obtain $\frac{1}{8}$ of the total number of votes polled by all the candidates other than the Scheduled caste candidates. (U.P. Legislative Assembly Rules, Rule 5(3)).

In the case of the Legislative Council Elections the deposit is forfeited if the candidate by whom or on whose behalf the deposit is made is not elected and the number of votes polled by him does not exceed $\frac{1}{8}$ of the total number of votes polled (U. P. Legislative Council Electoral Rules 5(3)).

Procedure after nominations. (Use of colours).—After nomination the names of candidates in the case of General, Muhammadan, (including women's) urban constituencies and all labour constituencies will be published with the name of the colour or a combination of colours allotted to candidates. Colours are to be allotted to candidates in the alphabetical order of their names and in the sequence in which the colours are mentioned in the Schedule to the rules, and in the case of other constituencies the Returning Officer will also cause the names of the candidates to be entered in the Ballot papers (in forms attached to the rules) separately assigned to each (U.P. Legislative Assembly Electoral Rules 7(1)).

Procedure after nominations : Legislative Council Elections.—(a) In the case of General and Muhammadan constituencies the name of a candidate will be published together with the name of the colour or a combination of colours allotted to such candidate. Colours are allotted in alphabetical order of their names and in the sequence in which the colours are mentioned in the Schedules attached to the rules. (b) In the case of the European constituency the Returning Officer will also cause the names of candidates to be entered in the Ballot papers (Legislative Council Electoral Rules 7(1)).

RULES FOR VOTING AND FOR COUNTING OF VOTES LEGISLATIVE ASSEMBLY

General and Muhammadan (including women's) Urban Constituency and all special labour constituencies.—No person is admitted to vote at any polling station except the one allotted to the polling area in which he has been registered as an elector. (U.P. Legislative Assembly Electoral Rules 18).

LEGISLATIVE COUNCIL

The above rule is applicable in the case of the General and Muhammadan constituencies in the Legislative Council Elections by rule 12, part IV, of the U.P. Legislative Council Electoral Rules. But the same rule says that in the case of Nainital, Almora and Garhwal Districts (General) Rural constituency and Budaun, Shahjahanpur, Pilibhit, Nainital and Almora Districts Muhammadan Rural constituency a person entered in those parts of the Electoral roll which pertain to the Nainital Tahsil of the Nainital District shall be admitted

to vote at the Haldwani and Ramnagar Polling stations in the Nainital District on proper identification and the Presiding or the Polling Officer is satisfied that he is entitled to vote in the Nainital Tahsil and that he has not already recorded his vote in the said Tahsil. (U. P. Legislative Council Electoral Rules 12).

Special facilities for Women voters.—Both in respect of the Legislative Assembly Elections and the Legislative Council Elections, separate compartments and separate entrances and exits are to be provided for women electors. Suitable arrangements are to be made for recording votes by Pardanashin female electors as far as is practicable.

Identification of female electors.—For the purpose of identification the husband or other near relative of a woman elector may accompany her to the polling station. [Rule 21(2) and (3), Legislative Assembly Electoral Rules and Rule 15(2) and (3), Legislative Council Electoral Rules].

Ballot Boxes.—The box or boxes of each candidate in the polling compartment will be clearly marked with the name and the serial number of each candidate and the same will be coloured with the colour or colours allotted to him. [Rule 22(3), U. P. Legislative Assembly Electoral Rules and Rule 16(3), U. P. Legislative Council Electoral Rules].

Signature slips to Electors in U. P.—An elector presenting himself for voting would be provided with a slip on which he has to sign ; and his identifier who may be either a candidate or his representative or any person who may be admitted by the Presiding Officer to

identify electors. [Rule 19(1), U. P. Legislative Council Electoral Rules and Rule 25(1), U. P. Legislative Assembly Electoral Rules].

Issue of Ballot papers to Electors.—The elector has to present the slip to the Presiding Officer then who after satisfying himself that the slip has been duly signed, impressed and attested will give to the elector the counterfoil of a Ballot paper while noting on the corresponding counterfoil the number of the elector in the electoral roll, the subdivision of the roll if any and make a mark against the entry of elector's name in the electoral roll to denote that the elector has received the Ballot paper. [Rule 20, U. P. Legislative Council Rules and Rule 26, U. P. Legislative Assembly Electoral Rules].

Method of Voting.—The method of voting in U. P. is by placing the Ballot paper in the polling compartment unmarked in a box of the colour allotted to the candidate for whom he wishes to vote. [Rule 22(1), U. P. Legislative Council Electoral Rules and 28(1) of the U. P. Legislative Council Electoral Rules].

Procedure where two members are to be elected for the U. P. Assembly.—In the case of an election in a constituency from which two members are to be elected each elector will be given two Ballot papers on receipt of which he will be entitled to place both the Ballot papers unmarked in a box of the colour allotted to one candidate for whom he wishes to cast both of his votes or distribute them as he pleases and place them unmarked in boxes of the colours allotted to two different candidates. [Rule 28(1) (b), U. P. Legislative Assembly Electoral Rules].

Voting by Presiding and Polling Officers, Agents and Police Officers.—Public servants on duty at a polling station at which they are not entitled to vote may if certified by the Returning Officer be entitled to vote at an election for the constituency in connection with which he is employed or for any other constituency in the following manner :—

A Ballot paper will be issued to such an officer in the same manner as to an elector. The officer has to record the name of the elector for whom he wishes to vote at the back of the Returning Officer's certificate and hand over the Ballot paper and the certificate fastened together to the Presiding Officer. The name of the polling station at which such an elector would otherwise have been entitled to vote will be entered in the counterfoil of the Ballot paper together with the number of his in the electoral roll. The Ballot paper will be placed in an envelope together with the certificate and sealed by the Presiding Officer and returned to the Returning Officer who has granted the certificate and such Returning Officer will cause such vote to be included among the other votes for the candidate designated by the elector. [Rule 32 of the Legislative Assembly Electoral Rules and Rule 25 of the U. P. Legislative Council Electoral Rules].

Deposit in the case of challenged votes.—A person challenging votes may be required to deposit a sum of Rs. 20 by the Presiding Officer at an election if he considers that there are grounds for believing that the challenger has declared without sufficient ground that a person has committed the offence of personation. If the challenger fails to make the deposit forthwith the

procedure prescribed below need not be followed. If the deposit is made and if at any subsequent proceedings it is found that the offence of personation was not committed by such person or if when called upon to do so by the Returning Officer the challenger fails to prove that the offence was committed by the alleged person the deposit will be forfeited to the Provincial Government [see Rule 33, U. P. Legislative Assembly Electoral Rules and Rule 26 of the U. P. Legislative Council Electoral Rules].

NOTE.—The deposit will be returned if it is not forfeited as above stated under the same rules. The same rule applies to General and Muhammadan (including Women's) Rural constituencies and the Indian Christian constituency in the matter of the U. P. Legislative Assembly Elections. [Vide Rule 62 of the U. P. Legislative Assembly Electoral Rules].

POSTAL VOTING IN U. P. ELECTIONS

U. P. Legislative Assembly Elections.—By virtue of Part IX of the U. P. Legislative Assembly Electoral Rules, postal voting is prescribed in the European, Anglo Indian, Upper India Chamber of Commerce, United Provinces Chamber of Commerce and Merchants' Chamber of the United Provinces and the University Constituencies.

U. P. Legislative Council Elections.—By Part V of the U. P. Legislative Council Electoral Rules, postal voting is prescribed in respect of the European constituency.

While sending Ballot papers to voters the Returning Officer will also send an envelope addressed to himself. On receipt of such a Ballot paper every elector desirous of recording his vote will have to appear before a Magistrate and sign the declaration on the back of the Ballot paper in the presence of such Magistrate who attests the elector's signature. If such an elector by reason of blindness or other physical defect is incapacitated from signing the declaration he may request such Magistrate to assist him in such manner as may be necessary to sign the declaration.

Each voter will have one vote in the case of the Legislative Council election and one or two votes according as one or two members are to be elected from a constituency in the matter of the Legislative Assembly Elections.

Manner of recording vote in postal voting.—In postal voting the elector votes by placing or causing to be placed a cross X or + opposite the name of the candidate whom he prefers; the Ballot paper will become invalid if the cross X or + is placed opposite the names of more than one candidate.

If a cross X or + is so placed as to render it doubtful to which candidate such mark is intended to apply the vote shall be invalid.

The elector after recording the vote as aforesaid will have to hand it over or cause it to be handed over to the Returning Officer in person or send it to him by registered post after affixing thereto the necessary postage stamp.

U. P. PRIMARY ELECTIONS : SCHEDULED CASTES
SPECIAL RULES FOR ELECTIONS

Assignment of colours to candidates in Primary elections.—In the case of an Urban Constituency the name of a candidate will be published together with the name of the colour or a combination of colours allotted to such a candidate.

In the case of a rural constituency the Returning Officer will cause the names of candidates to be entered in Ballot papers.

Withdrawal of candidature by persons declared elected at Primary elections.—Any candidate declared elected at a Primary election may withdraw his candidature by notice in writing subscribed by him and delivered to the Returning Officer or other person authorised at or before 3 o'clock in the afternoon on the third day from and inclusive of that on which the candidate has been declared so elected. A candidate who has withdrawn his candidature shall not be allowed to cancel his withdrawal [Rule 12(3), U. P. Legislative Assembly Electoral Rules].

Special procedure for election of members of the Scheduled castes in certain cases.—After any members of the Scheduled castes are declared elected as candidates for a seat reserved in a constituency as members of those castes at a Primary election for a member will be deemed as candidates for election held they reserved seat as well as to the non-reserved seat in that constituency and the election to such reserved and non-reserved seats will be determined at the poll which will be taken in that constituency on a date to be fixed.

Special procedure at elections in a constituency in which a seat is reserved for a member of the Scheduled castes.—If in a constituency in which a seat is reserved for a member of the Scheduled castes the number of candidates qualified to be chosen to fill that seat is greater than one the Returning Officer will publish the names of the candidates both for the reserved and non-reserved seats in the constituency indicating by special mark the candidates for the reserved seat in alphabetical order and a poll will be taken.

In the case of an Urban constituency the name of a candidate will have to be published together with the name of the colour or a combination of colours allotted to such a candidate.

In the case of a rural constituency the Returning Officer will also cause the names of candidates to be entered in Ballot papers.

Special rules for voting etc., in all General and Muhammadan Rural constituencies and Indian Christian constituencies.—[Chapter VI of the U. P. Legislative Assembly Electoral Rules.]

No person will be admitted to vote at any polling station except the one allotted to the polling area in which he has been registered as an elector.

Similar provision is made applicable also in the case of the U. P. Legislative Assembly Elections in the case of General and Muhammadan (including women's) rural constituencies and the Indian Christian constituency (rule 46, U. P. Legislative Assembly Electoral Rules) except that in the cases of the Nainital District General (rural) constituency and the Nainital Almora

and Bareilly (North) District Muhammadan (rural) constituency a person entered in those parts of the electoral roll which pertain to the Nainital Tahsil of the Nainital District shall be admitted to vote at Haldwani, Kalandhungi, Kotabagh and Ramnagar Polling stations in the Nainital District provided that he can be identified and the Presiding or Polling Officer is satisfied that he is entitled to vote in the Nainital Tahsil and that he has not already recorded his vote in the said Tahsil. [Rule 46, U. P. Legislative Assembly Electoral Rules].

Method of voting in Rural constituencies.—A literate voter, in a constituency from which one member is to be elected and at a Primary election held to elect a panel of 4 Scheduled castes candidates for a seat reserved for a member of those castes in a general constituency shall mark a cross against the name of the candidate whom he prefers ;

In the case of an election in a constituency from which two members are to be elected a voter is to mark a cross either twice against the name of any one of the candidates or a cross respectively against any two of the candidates whom he prefers. [Rule 56, U. P. Legislative Assembly Electoral Rules.]

Special Rules for voting in British Indian Association of Oudh constituency.—Part VII of the U. P. Legislative Assembly Electoral Rules.

Every elector wishing to vote should attend at the Kaiserbagh, Baradari, Lucknow or at such place or places and at such time as may be fixed.

The Returning Officer delivers to an elector a Ballot paper together with an envelope for enclosing the same.

The elector signs the declaration on the Ballot paper in the presence of the Returning Officer and then he has to proceed to a screened place and there mark his vote or votes on the Ballot paper as follows: (a) Each elector will have as many votes as the number of members to be elected but he cannot give more than one vote to any one candidate. (b) A vote is recorded by placing or causing to be placed a cross X or + opposite the name or names of the candidates whom he prefers. (c) The Ballot paper will be invalid if the cross X or + is so placed as to render it doubtful to which candidate such cross is intended to apply. (d) The elector has to sign a declaration on the back of the Ballot paper that he is an ordinary member of the Association and that his name is borne on the roll of the constituency. (e) The signature of the elector will have to be attested by the Returning Officer and (f) the elector will then have to enclose the Ballot paper in the envelope provided and after closing the same hand over the same to the Returning Officer. [Rule 72, U. P. Legislative Assembly Electoral Rules.]

Special Rules for voting applicable to the Agra Province Zamindars' Association of Allahabad constituency.—Part VIII of the U. P. Assembly Electoral Rules.

An elector desirous of recording his vote will have to attend for voting at the office of the District Officer in the District under which his name appears in the Electoral roll at the appointed time.

The attesting officer will supply a Ballot paper to the elector together with an envelope for enclosing the same. The elector will thereupon have to sign a declaration on the back of the Ballot paper in the presence

of the Attesting Officer that he is an ordinary member of the Association and that his name is borne on the roll of the constituency, the number and the name of the elector on such roll will also be stated. The signature of the elector will have to be attested by the Attesting Officer. The elector will have to then go to the voting compartment and mark his vote as follows :

(a) A voter will have as many votes as there are candidates but he will not be allowed to give more than one vote to any one candidate. (b) The voter will have to place by placing or causing to be placed a cross X or + opposite the name or names of the candidates whom he prefers. (c) The Ballot paper will be invalid if the cross as above stated is placed opposite the names of more candidates than are to be elected. (d) The elector after marking the Ballot paper in accordance with the above instructions will have to enclose the same in the envelope and after closing it hand it over to the attesting officer. [Rule 80, U. P. Legislative Assembly Electoral Rules.]

ELECTION EXPENSES IN U. P.

In respect of the Legislative Assembly Elections.— The maximum scale of election expenses which will apply to election of any candidate under the rules will be as follows : (a) General and Muhammadan constituencies (including women and Scheduled castes) (i) Rural Rs. 20,000, (ii) Urban Rs. 15,000, (b) European constituency Rs. 15,000, (c) Anglo Indian constituency Rs. 15,000, (d) Indian Christian constituency Rs. 15,000, (e) Special constituencies (i) Agra Province Zamindars' Association, Allahabad Rs. 10,000, (ii) British Indian

Association of Oudh Rs. 10,000, (iii) Upper India Chamber of Commerce Rs. 1,000, (iv) United Provinces Chamber of Commerce and Merchants' Chamber of the United Provinces Rs. 1,000, (v) Trade Union Rs. 5,000, (vi) Cawnpore Industrial Factory Labour Rs. 1,000 (vii) Industrial Factory Labour in Lucknow, Agra, Aligarh and Allahabad Rs. 4,000, (viii) Universities Rs. 2,000.

In the case of the Scheduled castes candidates standing in the constituencies reserved for them the maximum should cover the cost of both elections Primary and final.

In respect of the Legislative Council Elections.—The maximum scale of election expenses applying to election of any candidate is : In General Muhammadan constituencies (1) if Rural Rs. 10,000 and (2) if Urban Rs. 8,000.

In the case of the European constituency the maximum scale of Election expenses allowed is Rs. 10,000.

Vacation of seats by members elected to more than one seat in Provincial Legislatures in U. P.—The period within which a person may resign all but one of the seats if he is elected to more than one seat in the United Provinces Legislative Council or the United Provinces Legislative Assembly will be ten days from the date of the declaration in the Gazette. [Rule 60, Part 8, U. P. Legislative Council Electoral Rules and Rule 130, U. P. Legislative Assembly Electoral Rules.]

CHAPTER VI

Indian Case Law on Elections

ENGLISH LAW OF ELECTIONS HOW FAR APPLICABLE IN INDIA

The Indian Statutory provisions as regards Indian Elections are complete in themselves and hence the English Common Law provisions are not to be administered by Indian Courts. (61 I.C. 337, Malik Barkat Ali vs. Moulvi Muharram Ali Chisti.)

Indian Election Law is based on English Election Statutes but it differs from English Law widely in numerous particulars and hence it should be regarded as a separate corpus, the Indian Legislators having adopted some and discarded others of the English Election provisions. The Indian Legislature intended to make their statutory provisions complete in themselves and there is nothing whatever to indicate that there was any intention that the Indian Courts should administer English Common Law provisions. In England particulars of any corrupt practices alleged in the petition are not given in the petition and may be supplied within a specified time after filing the petition. In India the rules require them to be embodied in the petition. It is intended by the legislature in India that particulars of any corrupt practice alleged must be given in the election petition and that the English Law as in this respect has not been followed. The Court may under

such circumstances order for further and better particulars (under Order 6, Rule 5, C. P. Code).

Common Law of England relating to Parliamentary elections: When invoked in India.—The Common Law of England relating to Parliamentary election and the principles which underlie that law may be invoked if they appear to the court to be in conformity with the rules of justice, equity and good conscience. (Ramanjulu Naidu *vs.* Parthasarathy Iyengar, 28 I.C. 612, 17 M.L.T. 231, 1915 M.W.N. 290, 2 L.W. 383).

Right to nominate candidates.—It is the undoubted right of persons included in an electoral roll for a territorial constituency to nominate candidates to represent them. The right to nominate a candidate is undoubtedly part of the franchise and a denial of that right does constitute a denial of the franchise. Where that right is denied a remedy by suit after an election is held could not be regarded an adequate remedy (T. Ekambara Naikar *vs.* The Commissioner of the Madras Corporation, 99 I.C. 18).

Elector whether can nominate more candidates than there are vacancies.—Usually the rules for the conduct of elections provide that no voter will be at liberty to nominate more candidates than there are vacancies. No elector can validly nominate more candidates than there are vacancies.

Suit to declare rejection of a nomination paper as invalid and for Injunction if possible.—Where a nomination paper is rejected, suit for a declaration that its rejection is invalid and for an injunction restraining the

holding of the election is maintainable (118 I.C. 289 Madras).

The above case is decided under the Madras Local Boards' Act XIV of 1920 wherein rules for the conduct of elections provide that no voter shall be at liberty to nominate more candidates than there are vacancies. This case follows the case of Sarvottamrao *vs.* Chairman, Municipal Council, Saidapet in 73 I.C. 619, 47 M. 585, A.I.R. 1923 Mad. 475.

ELECTION AGENTS AND CANDIDATES

Election Agent whether can be the proposer or seconder of a candidate.—An election agent of a candidate can be his proposer or seconder and vice versa. (Khan Bahadur Malik Muhammad Amin Khan *vs.* Lieut. Sikandar Hayat Khan, 61 I.C. 744.)

The rule is that a candidate cannot be his own proposer or seconder. In that case it was argued that in as much as a candidate cannot be his own proposer or seconder, an election agent cannot be the proposer or seconder of a candidate any more than the candidate himself. It was held that there was no authority or rule or regulation in favour of this view. It was therefore ruled in that case that it was a very far fetched proposition and in the absence of any direct or indirect enactment by the Legislature prohibiting the proposer of the candidate from being his election agent or vice versa this contention was rejected.

As regards the amendment of the election petition there is nothing in the rules justifying the view that a petition which gives particulars of the corrupt practices relied on is to be summarily rejected for want of fuller

particulars. On the contrary there is authority in the Civil Procedure Code (by the provisions of which inquiries are to be conducted by the Commissioners appointed to inquire into election petitions) for allowing further and better particulars to be given with the reservation that the petitioner is not to be permitted to make out a new case. The object of furnishing such particulars is to avoid surprise to the respondent and from that point of view they are as necessary in the interests of the parties concerned as in those of justice and fair-play. (See 61 I.C. 357, *Khan Dauran Khan vs. Malik Muhabbat Khan*.)

Responsibility of candidates for acts of Agents.—
Knowledge of Agent's act when presumed.

A candidate is responsible generally for the deeds of those who to his knowledge for the purpose of promoting his election canvass and do such other acts as may tend to promote his election provided that the candidate or his authorised agent has reasonable knowledge that those persons are so acting with that object. (*Ibid*).

The law of agency in elections has long been held in England to go much further than the ordinary law of principal and agent as said on page 76 of Fraser's *Law of Parliamentary Elections and Election Petitions*. "Where there is no express appointment the agency must be inferred from facts" and again on page 84 of the same work "the fact that a candidate has expressly or impliedly employed any person to canvass for him will generally but not necessarily constitute that person his agent."

See the Wakefield case, (1874) 2 O. M and H. 100, 102, 103 and Wigan case, (1881) 4 O. M and H. 1, page 12. Grove J. said in the latter case "there may be cases in which canvassing would not necessarily involve agency but general canvassing has always been held to be strong evidence of agency and which requires a very strong case to rebut it if it can be rebutted."

The relation of Candidate and Agent how established.—The relation of candidate and agent is for the purposes of elections inferred from facts. (Rajmal Zaildar vs. Rai Saheb Choudhari Lajpatrai, 61 I.C. 353).

The relation of candidate and agent is much wider than that of principal and agent under the ordinary law.

ELECTIONS

Governor's power to fix dates for Elections.—The Government of India Act as well as the orders referring to the Elections to Assemblies and the Legislative Councils mention that the Governor of a province is empowered to fix dates for elections exercising his individual discretion in each case.

This right of the Governor to fix dates is not confined merely to elections to provincial councils only, it is also recognised in other cases as well. For instance under the Madras City Municipal Act the Governor in Council is competent to issue a notification fixing fresh dates from time to time as often as occasion requires in filling up vacancies arising by efflux of time or otherwise. (99 I.C. 18, T. Ekambara Naikar vs. The Commissioner of Madras Corporation.) But it has been held in that case that a reference to the Governor in Council in the Madras City Municipal Act could not in consonance with

the general intent be regarded as anything other than a reference to the executive Government. (*Ibid.*)

BALLOT AND VOTES

Taking part in Ballot: What is.—Taking part in Ballot is not merely actual voting but it also includes presiding at the meeting for election or acting as Returning Officer. (A. K. G. Ahmed Thambi Maricaire vs. V. S. Basava Maracayar. 72 I.C. 902.)

Recount of votes.—When is a recount of votes allowed? After an election as we have noticed above the Ballot papers etc., will be kept carefully sealed after the results of the counting of the votes are announced. A recount of the votes is not granted by the Election Court as a matter of right, but only on evidence of good grounds for believing that there has been a mistake or misconduct on the part of the Returning Officer. But usually nothing can be alleged than cause to suspect the original count. Usually there would not be an over strict insistence that an application should be supported by evidence of miscounting. It would do if an application for recount is supported by an affidavit.¹ This is the view expressed by the Madras High Court which bases its observations on English Law on the subject.

In England a recount is not granted as of right but on evidence of good grounds for believing that there has been a mistake on the part of the Returning Officer.² The practice in England is to order a recount before the

¹ M. Lakshmana Iyer vs. Rajam Aiyangar, (1929), 124, I.C. 216 (Madras).

² Halsbury, Para 891, Vol. XII.

trial where there is reason to believe there has been a miscount. Applications for it should be made by summons supported by affidavits showing grounds.¹

Meaning of Voting.—Voting is the expression or intimation of a wish or choice not involving the exercise of judgment.

NOTE.—Thus, the exercise of vote may be actuated by judgment or it may be actuated by mere whim or caprice. For the exercise of a valid vote the method by which that wish or choice is arrived at is wholly immaterial so long as the person upon whom the duty of giving the vote is cast, expresses or intimates his wish or choice however arrived at.

Casting vote : How given by the Presiding Authority.—Method of giving the casting vote.

The Presiding Authority entrusted with the duty of giving a casting vote is not bound to exercise his judgment. He may make up his mind whether by exercising his judgment, consulting a friend, spinning coin, drawing lots or otherwise before intimating his preference for choice of one candidate or another.

Where a presiding authority finds himself unable to choose between candidates by reason of equality of the merits of the candidates or for any other reason he may assist himself in choosing between them by drawing lots, consulting a friend, spinning a coin or otherwise before intimating his preference for choice of one candidate or another. [105 I.C. (1927), Page 759.]

The above case is decided under the Bombay City Municipal Act which does not fetter a Presiding Officer

¹ Rogers on Elections, 19th Edn., Vol. II, Page 301. See also the Stepney case, 4 O.M. and H. 34 in which oral evidence was taken.

as to the means by which he may make up his mind. It would seem that this principle may as well apply in all cases where a presiding authority has got to make his choice in the matter of exercising his judgment in favour of one or the other of the candidates where he has to exercise the same by giving his casting vote. (See also *In re Hopper*, 1867, 2 Q.B. 367, 8 B and S. 100 ; 36 L.J. Q.B. 97, 15 L.T. 566.)

Nullification of vote : Voter writing name on the vote.—It is a breach of election rules to write the name of the candidate on the Ballot paper against the space left for cross mark and the same nullifies the vote resulting in its being declared invalid.

A voter who writes the name on the Ballot paper commits a breach of election rules. These rules are not directory but mandatory. [*Y. A. Venkatramiah vs. M. Subbi Reddi*, 90 I.C. 1055 (1924).]

Election Court's Decision as to validity of votes.—In the matter of a decision as to the validity of a vote it is the Election Court and not the Returning Officer that is the final authority. (*K. K. S. Mamundi Konar vs. P. Shamshuddin Sahib Bahadur*.)

An Election Court has jurisdiction to decide for itself whether the Returning Officer's rejection or refusal of a vote was proper. The Election Court is entitled to set aside the election if the rejection or refusal of a vote by a Returning Officer is not proper and the result of the election has been materially affected thereby. In such a case it may set aside the election and order a fresh one ; or if the result of the scrutiny is to give a majority to another candidate it may declare that candi-

date to be elected. [K. K. S. Mamundi Konar vs. P. Shamsuddin Sahib Bahadur, 90 I.C. 771, 1920, See also Woodward vs. Sarsons (1875), 10 C.P. 733, page 748, 44 L.J.C.P. 293 ; 32 L.T. 867.]

Evidence.—Whether can be allowed to vary recorded voting paper showing election to be void.

No evidence would be allowed to vary the recorded voting which on the face of it shows an election to be invalid and void. (60 I.C. 547, Calcutta, Nagendranath Sen vs. J. Vas.)

Effect of Recorded votes exceeding the number that could be given.—Where the number of votes recorded exceeds the maximum that can be given the election will be invalid and void. (*Ibid.*)

This maxim is a perfectly sound one and one that cannot be controverted in the case of any elective body especially when there are no rules providing for any such contingencies. (*Ibid.*)

Identification of voters by marks on the Ballot papers.—A Polling Officer is to see whether any reasonable ground has been shown for concluding that by the marks on the voting paper the votes might be identified. An election court is equally entitled to go into the question of the validity of the vote.

Example.—A Ballot paper bore besides the cross mark against the name of one of the candidates lines scoring out the names of the other candidates but the election court held that the vote was valid. (See 90 I.C. 771, 1055.)

This case follows the English cases in *Woodward vs. Sarsons* which is a leading case on the subject (1875 10 C.P. 733 at page 748 ; 44 L.J. C.P. 293 ; 32 L.T. 867). It decides that "Whether a Ballot paper is void or not is upon a point of fact to be decided first by the Returning Officer and afterwards by the election tribunal on petition and the election proceeds in that case to decide for itself whether or not certain marks on the Ballot papers did or did not invalidate the votes. Such a procedure was followed in the other cases also such as in the *Stepney* case, 4 O'M and H. 37 and in *Wigtown* case, 2 O'M and H. 215 and in other cases as well. Section 2 of the Ballot Act 1872, 35, 36, Vict. Ch. 33 lays down that the decision of the Returning Officer as to any question arising in respect of any Ballot paper shall be final subject to reversal on petition questioning the election or return." There is no authority in the words of Wallace, J in the undermentioned case for the proposition that the law is different in this country. His Lordship says that Election Courts in this country have from time to time in deciding such questions as to validity of votes held a scrutiny of votes etc., and I do not recall any instance in which their jurisdiction to do so has been questioned.

Non-Voter Voting.—Ground for questioning of election (*Ibid*).

For questioning a particular vote it is necessary to prove that the person who voted was not the voter mentioned in the Electoral Roll. Unless it is proved there could be no ground for questioning the election.

Writing on the Ballot paper : When makes voting paper void.—A vote recorded in favour of a candidate

will not be invalidated by the fact that the name of the candidate for whom the vote was not cast was struck out on the voting paper or by any mere unintelligible tracing or other mark or writing on the voting paper unless the tracing mark or writing is such by which the voter may afterwards be identified.

Where the intersecting point of the cross mark on a voting paper is bisected by the line between the names of two candidates the vote cannot be counted in favour of any of those candidates and must be excluded altogether.

This case was decided under the Madras District Municipalities' Act V of 1920. [*T. C. Xavier vs. E. C. Joseph*, 87 I.C. (1925) 216 Madras.] ,

The leading case on the subject is *Woodward vs. Sarsons* (1875. 10 C.P. 733 ; 44 L.J. C.P. 293 ; 32 L.T. 867.)

It should appear that the mark put in there was so put in by some pre-arrangement or conspiracy by reason whereof by looking at the mark one will be in a position to say that it is the vote of such and such a person. Such an intention must be gathered from the mere appearance of the writing. Suppose a man writes a simple letter on the voting paper say "c" that being only a single and such a simple letter will not be sufficient to form a ground for identification of the writing of any person.

Disqualification of nominated candidate makes his election void.—(Part 3, para 7 (c) of the Government of India Provincial Elections Corrupt Practices and Election Petitions Order, 1936.)

Where there is an election the principle is that the candidate who is declared to be elected must be shown to have the majority of votes (*Hobbs vs. Morey*, 1904, K.B. 73 L.J. K.B. 47, 68 J.P. 132). This *prima facie* requirement of law is subject to a modification. If a candidate is disqualified by status (as in the case of a woman or felon) as observed in the same case the votes given for that candidate will be held to have been thrown away and the opposing candidate although in fact he has received a less number of votes will be declared to be elected.

At the conclusion of the inquiry the Commissioners have to report whether the returned candidate or any person who has lodged a petition and claimed a seat has been duly elected. (See para 8, part 3 of the Government of India Provincial Elections Corrupt Practices and Election Petitions Order, 1936.)

Where an elected candidate obtaining the largest number of votes at an election is unseated on the ground that he is disqualified in order to declare elected the candidate obtaining the next largest number of votes, there should be an allegation and proof that the disqualification under which the successful candidate is ultimately found to labour was known to the voters who cast their votes for him. See 90 I.C. 759, *S. Gopala Iyengar vs. M. K. Mahomed Ibrahim Rowther and others*. In the same case it is observed as follows :

“If a voter throws away a vote by ignorance something which he could have known and which would have told him that he was throwing away his vote because he was giving it for the person who

could never succeed in the election then his vote is to be taken as wiped out of the election and the man who has the next highest number of votes can be declared duly elected ; but if the votes were given in ignorance of the disqualification under which the candidate of his choice was in fact labouring, then it would be inequitable to allow the votes to be thrown away for that reason and the only proper course is to order re-election."

From this it is clear that if voters throw away votes in ignorance of the disqualification it is not equitable to declare the candidate securing next the highest number of votes elected. In such a case it is proper to order a new election instead of declaring the next candidate elected in the place of the candidate whose election has been declared void on account of disqualification.

Conclusiveness of the Register: Persons not in voters' list voting.—A register is conclusive not only at but after the election so that votes of persons whose names are on the register cannot be struck off on a petition unless the persons come within the provision. [70 I.C. 874, Raghunath Sarma, Dhaneswar Sarma vs. Jiban Chandra Sarma, see also Sec. 7, Ballot Act, 1872—Stowe vs. Jolliffe, (1874) 9 C.P. 734 ; 43 L.J.C.P. 265—30 T.L. 795].

Lord Coleridge says that in England after the register was established by the Reform Act the view was adopted that the entry of a name of a voter on the register was a condition precedent to the exercise of franchise by him.

Election based on former electoral roll : Whether would make election void.—An election is not invalid merely because of its having been held on the basis of an electoral roll prepared a long time before the date of election if no other roll has been prepared in the meantime, that is to say, between the time of the last election and the election held on the basis of the said electoral roll. (129 I.C. 240, T. S. Venkatrama Iyer vs. Kuppuswamy Iyengar, 1930).

It was so held in the above case. The case was decided under the Madras Local Board Elections under the Madras Local Boards Act, XIV of 1920. It would seem that the principle therein enunciated is applicable in the case of all elections. Even though it may be granted that there has been a deliberate departure from the English Law in this respect it does not follow that a petition is to be rejected *in limine* on the ground that it fails to give particulars.

ELECTION PETITIONS AND LEGAL PROCEEDINGS

Publication of petition in Gazette : Object of.—The main object of publishing the petition in the Gazette is to notify candidates other than the petitioner or petitioners, respondent or respondents that a petition has been presented. For certain purposes publication in the Gazette is intended to be notice to the world in order that ignorance of the matter published may not be pleaded later by any parties affected. In England the rule is to publish the petition only and that too in the limited area of the county or borough. (Halsbury's Laws of England, Vol. XII, Page 412).

Formalities prescribed by the Civil Procedure Code : How far to be complied with.—Under Order 6, Rule 2, material facts alleged in the petition and under Order 6, Rule 4, particulars should be stated in certain specified cases. Particulars will be ordered under Order 6, Rule 4, of such material facts on which the party pleading relies for his claim or defence but not of the evidence by which those facts are to be proved. If particulars are not sufficiently specific, the remedy of the other side is to apply for further and better particulars under Order 6, Rule 5. The plaint would be rejected under Order 7, Rule 2, as not disclosing a ground of action where there are no particulars at all but merely general allegations which would not even amount to an averment of fraud. This would apply not only in cases of allegations of fraud but also generally to all other cases where particulars are necessary. Under Order 6, Rule 17, the Court is given power to allow alteration or amendment of pleadings at any stage of the proceedings upon such terms as it thinks just and all amendments necessary to determine the real questions in controversy shall be made. Unless a plaint were rejected under Order 7, Rule 2, as not disclosing a cause of action then under the Civil Procedure Code the Court has the widest powers for allowing amendment of the petition in a proper case (*Ibid*).

Returning Officer whether should be made a party.—There is no provision in the Indian Law as there is in English Law for the Returning Officer being made a respondent in an election petition. (*Govardhandas vs. Lalchand*, 110 I.C., 342 A.I.R., 1928 Mad. 1129). In England however a Returning Officer may be impleaded

as a respondent (see Halsbury's Laws of England, Vol. XII, Page 821, and Rogers on Elections, Vol. II, Page 266).

Election petition how presented.—An election petition is properly presented if it is handed over to an official and in fact it reaches the official within the time fixed by the rules or the legislature.

Verification of the petition.—It is only after the petition has been duly presented that the procedure laid down in the Civil Procedure Code has to be followed. (Suraj Narain *vs.* Jang Bahadur and others, 74 I.C., Page 2, 1923).

Amendment of Election petition.—An application for the amendment of an election petition filed after the expiry of the days allowed for the objection may be allowed in the discretion of the Judge. (D. A. Kandaswami Chettiar *vs.* G. F. F. Foulkes, 92 I.C. 100, 1926).

Amendment when allowed by Commissioners.—The Commissioners have power to allow further and better particulars to be furnished subsequently to the filing of the petition if (1) the particulars which are stated in the petition are in the opinion of the Commissioners adequate for the purposes of the election petition, and (2) if no new substantive charge is introduced by the amendment and the respondent is safeguarded from being taken by surprise.

Form of an Election petition.—It is necessary that particulars of any corrupt practice alleged must be given in the election petition. (Malik Barkat Ali *vs.* Moulvi Muharram Ali Chishti, 61 I.C. 337).

There is no prescribed form in which an election petition is to be drafted or of the particulars to be stated in cases where particulars are necessary. It is enough if the petition is drafted according to the form given at Page 415 of Halsbury's Laws of England, Vol. 12, or on the lines of a plaint written according to the requirements of the Civil Procedure Code.

An amendment or amplification of an election petition may be allowed by the Commissioners. (*Malik Barkat Ali vs. Moulvi Muharram Ali Chisti*, 61 I.C. 337).

Powers of the High Court to interfere in Election matters.—A High Court cannot use the power given to it under Sec. 45 of the Specific Relief Act, if an Election Tribunal whose decision is impugned has exercised the discretion entrusted to it bona fide not influenced by extraneous or irrelevant considerations and not arbitrarily or illegally. The High Court has the power to prevent the intentional usurpation or mistaken assumption of a jurisdiction beyond that given to the tribunal by Law and also the refusal of their true jurisdiction by the adoption of extraneous consideration in arriving at their conclusion or deciding a point other than those brought before them in which cases the Courts have regarded them as declining jurisdiction.

Returning Officer putting a wrong interpretation on Electoral Rules.—Even if a Returning Officer has put a wrong interpretation on the electoral rules so long as he had not refused a jurisdiction vested in him nor had not usurped a jurisdiction that he did not possess, a High Court cannot interfere.

Illustration.—R, a Returning Officer for a constituency of the Bengal Legislative Council rejected a nomination paper of a candidate seeking election to the council as on the date of filing of the nomination paper he was a member of the Council of State although he resigned his seat thereon before the date of the scrutiny of the nominations. Under the Bengal Electoral Rules a person is not eligible as a member of the council if he was a member of the Council of State or any other body constituted under the Government of India Act. The rejected candidate applies under Sec. 45 of the Specific Relief Act urging that the Returning Officer should have decided the question of his eligibility with reference to the date of the scrutiny and not with reference to the date of filing of the nomination paper.

Here the High Court would not interfere as even supposing that the Returning Officer has put a wrong interpretation of the Rules he has not refused to exercise a jurisdiction vested in him nor had he usurped a jurisdiction that he did not possess (*Maharajah Sir Munindra Chandra Nandi vs. Hon. Provos Chandra Mitter and others*, 79 I.C. 1042).

In the above case reliance was placed on the case of *Rex vs. Board of Education*, (1910), 2 K.B. 165, Page 179; 79 L.J.K.B. 595—102 L.P. 578; 74 J.P. 258; 8 G.L.R. 549; 26 T.L.R. 422. In such proceedings it is not for the High Court to say whether the Returning Officer put a right or wrong interpretation or whether he was right or wrong. So long as he did not usurp a jurisdiction which he did not possess or refuse a jurisdiction which was not vested in him or he was actuated by any mala fides or extraneous circumstances, the High

Court would not interfere. In such a case the function of the Returning Officer is in the nature of a judicial decision (Richardson, J. in 79 I.C. 1045).

It is idle to ask for a mandamus when there has been no refusal to perform a statutory duty and the question whether in point of law it was properly performed is in doubt.

“If in a proper case the Returning Officer should decline to make a reference or if the Governor should decline to decide a reference properly made to him it should then be time enough to have recourse to the provisions of Section 45 of the Specific Relief Act.”

Remedy by injunction and Action for damages.—
Proper Remedy where election held.

In the case of an election which has already taken place the proper remedy is to proceed by an election petition to set aside the election. (73 I.C. 178.)

Where a nomination paper is wrongly rejected the plaintiff is not bound to wait till the election is held; he has a cause of action to prevent by an injunction the carrying out of the threatened action which would have the effect of illegally interfering with his rights. (*Ibid.*)

Where a Local Government have declined jurisdiction to interpret the rules and there being no conclusive ruling on the point, the Civil Court has the jurisdiction to inquire into and decide the matter. (*Ibid.*)

If a person entitled to vote or be a candidate at an election is wrongfully deprived of that right an action

for damages lies against the person so depriving him; but if the act by which the right is interfered with is done in a judicial capacity no action for damages will lie unless the act is done maliciously *i.e.*, dishonestly. [*Pickering vs. James*, 1873; 8 C.P. 489, page 509. 42 L.J.C.P. 217. 29 L.T. 210; 21 W.R. 786. See also *Asby vs. White* 1 S.M.L.C. 11 Ed. 240, page 295 and 10 Ed. 231, 2 L.D. Raym. 938, 14 Howell S.T.T.R. 695; 92 E.R. 126. *Municipal Board Agra vs. Asarfilal*, 65, I.C. 984; 44 A. 202, 20 A.L.J. (1922) A.I.R.A. 1.]

The above cases lay down that where there is legal right which can be asserted in law or equity a court of equity can grant an injunction in protection of that right. The question now for consideration is as to whether the provisions of Section 42 of the Specific Relief Act can be invoked in matters relating to elections.

The Section runs as follows:—

“Any person entitled to any legal character or to any right as to any property may institute a suit against any person denying or interested to deny his title to such character or right and the court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief.

Provided that no court shall make any such declaration where the plaintiff being able to seek further relief than a mere declaration of title omits to do so.”

It must be admitted that the right to stand as a candidate in the words of Wallace, J. in the above case

is a legal character within the meaning of the above section (S. 42 of Specific Relief Act.)

If this legal character is the creation of a specific statute and the statute itself sets up a proper tribunal for trying cases of the infringement of the right to such a legal character and that tribunal has functioned judicially the Civil Court has no jurisdiction to deal with a case of an alleged infringement of that right. For instance in order to inquire into election offences if a tribunal is set up and the same functions judicially the Civil Court will not have jurisdiction to deal with the case. (Per Wallace, J. in the above case.) But where the duly constituted tribunal has declined jurisdiction and refused to try the question of the right of a party to a legal character, the aggrieved party is thus bereft of his statutory and constitutional remedy and it is the province of a Civil Court as a Court of Equity, to fill the vacuum created and to exercise the jurisdiction which the proper tribunal has failed to exercise, as for example, the Local Government, a statutory tribunal misinterprets its own rules as giving it no jurisdiction to decide the validity of a nomination paper at a Municipal Election, the Ordinary Civil Court has jurisdiction to entertain a suit for that relief and to grant a proper temporary injunction retaining matters in *status quo ante* until the suit is tried.

A person interested in setting aside an election need not wait until the election is held and then bring an election petition which is bound to succeed. In the words of Schwabe, C.J.. "I do not think that the law is such that the plaintiff must wait until the election is

held and then bring an Election Petition which is bound to succeed; nor indeed would that remedy give him all that he is entitled to because after the Election Petition had succeeded there would have to be fresh nominations and there might be other candidates in the field that he would have to meet, to say nothing of the trouble and expense that he would be necessarily put to."

[See *Aslatt vs. Corporation of Southampton*, (1881) 16, Ch. D. 143, 50, L.J. Ch. 31, 43 L.T. 464. 29 W.R. 117, 45 J.P. 111, *Richardson vs. Methley School Board* 1893, 3 Ch. 510; 62 L.J.C.H. 943; 3 R. 701; 69 L.T. 308; 42 W.R. 27.]

In the above case the rule provided that if any question arose as to interpretation of the rules otherwise than in connection with an election inquiry the question shall be referred to the Local Government whose decision shall be final. The rejection of nomination is a question of interpretation of rules to the Local Government whose decision shall be final. But the Local Government declined jurisdiction. Hence it was held that it was open to the Civil Court to decide that which has been declined by the Local Government.

In the above case Wallace, J. analyses the circumstances under which a court can interfere in matters relating to elections: (1) The nature of the infringement of the right complained of, (2) if there is a tribunal appointed by the Act or rules under it to deal judicially or quasi judicially and (3) if there is one has it functioned?

Usually a Civil Court will have no authority to

interfere for the reason that another tribunal is set up for that very purpose. The Local Government which drafted the rules would be the final arbiter for deciding what the rules mean and the Civil Court cannot ordinarily be asked to decide whether the Local Government's opinion of its rules is right or wrong. But if this tribunal had given its decision whether right or wrong in Civil Court's opinion it is immaterial, the Civil Court would have no jurisdiction. Where the Government have jurisdiction but have refused to exercise it the Civil Court may legitimately be called in order to decide whether a particular authority has or has not jurisdiction in a particular matter and if that authority has jurisdiction but refused to exercise it then to exercise it itself and not to leave the aggrieved party without any remedy.

The ordinary jurisdiction of a Civil Court may be barred by rule or statute but when that rule is not obeyed and that refuses to function then the bar is removed and there is nothing to prevent the Civil Court from functioning.

Case of "Mandamus and Quo Warranto" in England lays down that the Returning Officer is acting judicially in deciding on the validity of the nomination paper and that in respect of such judicial act no suit for damages can be maintained against him.

In the above English cases injunctions similar to those now in controversy were granted in actions for an injunction by a Court of Equity. [See Indian Cases in *Re Surendra Chandra Ghose*, 45 C. 950, 49 I.C. 454. *Narendra Nath Mitter vs. Radhacharan Pal Bahadur*

48 I.C. 314 ; 22 C.W.N. 943 ; 28 C.L.J. 289 ; 46 C. 119, Bhaishankar Nanabhai *vs.* Municipal Corporation of Bombay 9 B.L.R. 417 ; 31 B. 604, holding that a Civil Suit will not lie to set aside an order of the Collector who was the tribunal designated after an inquiry has been held by him.]

Setting aside election.—Before setting aside election it is necessary to find not only a non-compliance with rules but also that such non-compliance with rules has materially affected the result of the election. (*Ibid.*) [72 I.C. 902, A.K.G. Ahmed Thambi Maricair *vs.* V. S. Basava Maracayar.]

Principle of interference in Revision.—Where a court having jurisdiction has failed or refused to take up a point for decision it has exercised its jurisdiction irregularly and the more the failure or refusal affects the exercise of its jurisdiction the greater the irregularity will be [*Ibid.*] See also 71 I.C. 1039. Ramaswamy Goundan *vs.* Muthu Vellappa Gounden.]

Illustration :—P, the petitioner whose name had been duly proposed and seconded and himself presided at the meeting and conducted the Ballot, opened the Ballot box, counted the votes and acted as Returning Officer. This amounts to taking part in Ballot.

Taking part in Ballot is not restricted to mere act of voting. The rule has been framed to carry out the salutary principle that no man shall be a judge in his own cause and that it should not be in the power of one virtually interested in the result to decide such questions as intimately affecting the result *i.e.*, the validity

of a particular vote as the officer presiding at the Ballot has to decide. [Reg vs. Ownes 1859, 2 E.L. and E.L. 86 ; 566 (1867) 2 Q.B. 558. 8 B. and S. 587 ; 36 L.J. Q.B. 267. 2 Q.B. 558. 8 B. and S. 587, 36 L.J. Q.B. 267 ; 16 L.T. 828. 15 W.R. 988. See page 115 Vol. 111, Rogers on Elections, 18th Edition.]

A candidate is precluded from acting as Chairman at an election and is incapable of acting as a Returning Officer and that if he so acts and is elected his election is voidable on petition.

CIVIL PROCEDURE APPLICABLE TO ELECTION INQUIRIES

Practice in inquiries into Elections.—The practice prescribed is the same as that prescribed in the Code of Civil Procedure. Upon an application made it will be seen that evidence may be given by affidavit ; and hence in the undermentioned case Order XIX, Rule 2 of the Code of Civil Procedure was made applicable.¹ [M. Laxmana Iyer vs. Rajam Iyer, 124 I.C. 216.]

Improper acceptance or rejection of nomination : An Irregularity which is a ground for setting aside an election.—Sub cl. (3) of para 7 of part 3 of the Government of India (Provincial Elections Corrupt Practices and Election Petitions Order, 1936) says that if the result of an election has been materially affected by the improper acceptance or rejection of any nomination in the opinion of the Commissioners, then the election of the returned candidate shall become void.

This is mandatory. An irregularity would be available for setting aside the election only if and when it

should be made out that such an irregularity affected the result of the election [See *Chellasami Konar vs. Korusalsangama Nayakar*, Mad. 103, I.C. (1927) page 821.]

Validity of nomination paper.—Whether can be questioned after election.

The validity of a nomination paper may be questioned after an election although it was accepted by the Returning Officer. An election court is competent to inquire into the matter and if it finds that the nomination paper is not valid, it may declare an election void. [*A. Doraswamy Nadar vs. Joseph Mothen*, 1926, 92 I.C. 1926.]

Candidate declared elected without nomination: Whether nomination paper could be called in question before Commissioners.—Where a candidate is declared elected without a Ballot his being the only nomination paper, the validity of the nomination paper could be raised before and decided by the Election Commissioners in an Election Petition whether raised before the Returning Officer or not. (*Ibid.*) In this case the validity of the nomination paper was questioned on the ground that it was handed over to the Returning Officer before the time fixed by the rules and that the result of the election was materially affected. In such a case it was held that the Commissioners could decide the point irrespective of the fact whether it was raised before the Returning Officer or not.

Jurisdiction to decide the question of falsity of Return of expenses.—The Election Commissioners have the

jurisdiction to decide on the question of the falsity of the return of expenses filed by a candidate where the said question comes before them in the exercise of their powers. (*Ibid.*)

Finality of the orders of the Governor.—The Report of the Commissioners after it is signed by them will be forwarded to the Governor who will issue orders in accordance with the report and publish the report in the Government Gazette of the Province and the *orders of the Governor shall be final*.¹

NOTE.—Usually in election inquiries in cases of gross miscarriage of justice in a Subordinate Court the High Court as a Court of Revision would have the requisite power to interfere. Though the statutory tribunal to give the final decision with regard to the election may be the local court still if the High Court should find on Revision that by reason of any misdirection of itself or misconstruction of any important provision of law or rule the decision of the lower court has been a decision on a basis different to that contemplated by the statutory provisions, then the High Court would apart altogether from any question of jurisdiction or material illegality affecting it have the power to revise the order.² But in the case of election inquiries, after report and the orders of the Governor thereon there could be no revision or appeal of this type.

¹ See Sub-para (3) of Para 8 of Part III, Government of India (Provincial Elections) Corrupt Practices and Election Petitions Order, 1936.

² See the case of Chellasami Konar *vs.* Korusalsangama Nayakar, Madras, 103 I.C., page 821 (1927).

High Court's power to issue orders for enforcement of Public Duties.—There is no provision for appeal to the High Court or to any other tribunal once an election petition is heard and decided by the Commissioners appointed to hear election petitions. But under section 45 of the Specific Relief Act it would seem that the High Court has the power under the section to issue orders against public officers for enforcement of public duties. [See the case of T. Ekambara Naikar *vs.* The Commissioner of the Madras Corporation, 99 I.C. 18.]

Ground to set aside election.—Usually in Indian Law there are provisions to the effect that a candidate for election should send his name in writing not less than a fixed number of days before the date fixed for election. Such a direction being imperative, cannot be relaxed by the person holding the election. Hence the election of a candidate who has not complied with such a provision is illegal. [Rathis Chandra Munshi *vs.* Amulya Charan Ghatak 129 I.C. 422.]

When an election cannot be partially set aside.—Where two persons out of the total number of candidates should be elected from a particular ward or a constituency at one election and the election of one of those candidates is invalid, the entire election is to be set aside.

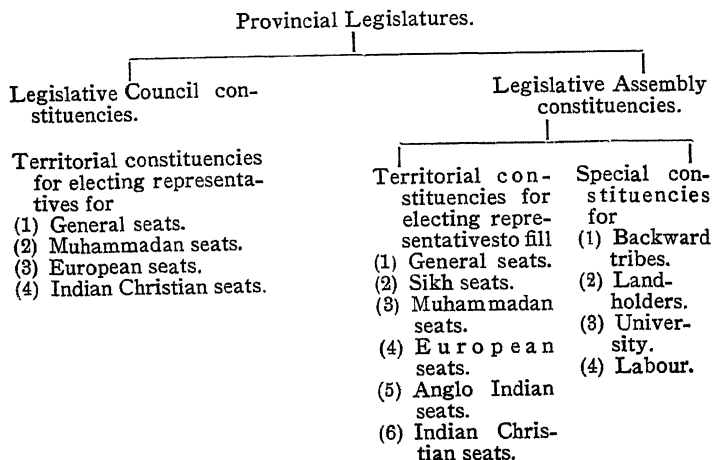
NOTE.—In such a case the election cannot be partially set aside because the intention of legislature is that two persons out of the total number of candidates should be elected from a particular ward or constituency at one election. The proper order to pass in such a case is to set aside the entire election. It is but fair-

to the constituency and the other candidates. Where such a provision is made, it does not contemplate that an election may be held piecemeal. [*Ibid.*] See also the case of Nisi Kanta Chowdhari *vs.* Gopeswar Chatterji, 96 I.C. 620 A.I.R. 1926 Cal. 1070.]

CHAPTER VII

Franchise qualifications for Electors for Provincial Legislatures

Territorial Constituencies.—For the purpose of electing members to Provincial Legislative bodies two kinds of constituencies are formed. They are Territorial Constituencies for elections to general, Sikh, Muhammadan, European, Anglo-Indian and Indian Christian seats and Special Constituencies for electing representatives, of Backward areas and tribes, Commerce, Industry, Mining and Planting, Landholders, Universities and Labour, as shown below :—



Territorial constituencies are formed in a province after excluding from it such portion thereof which His

Majesty may deem unsuitable for inclusion in any constituency of any particular class. They are formed for the purpose of electing representatives to the Legislative Council or Legislative Assembly as the case may be. They are allotted a particular number of seats to be filled by election. The special constituencies formed in a province for elections to Legislative Assembly are entitled also to elect a particular number of representatives allotted to them. After the formation of the territorial constituencies the total number of seats available will be distributed between the constituencies by the assignment of one or more of those seats to each constituency.

Electoral Rolls.—After the constituencies are formed, electoral rolls are prepared for each of the territorial constituencies and special constituencies. Every person whose name is entered in the electoral roll is entitled to vote. These electoral rolls are made up from time to time for all the constituencies for elections to all the legislative bodies. The next question is as to who is generally qualified to be entered in an electoral roll. In each province special qualifications are prescribed which would entitle a person to be included in the electoral roll of a territorial constituency. But generally speaking, British subjects, Rulers or subjects of a Federated State or the Rulers or subjects of any other native state if so prescribed, and of the age of 21 years would be entitled to be included in the electoral rolls of a territorial constituency for elections to a Provincial Legislature. Persons who are of unsound mind cannot be included in the electoral rolls. Similarly per-

sons who have been disqualified on account of corrupt practices in elections cannot be voters and their names will be struck off from the electoral rolls. Persons undergoing a sentence of transportation or imprisonment or penal servitude cannot be included in an electoral roll of a territorial constituency.

As regards the territorial constituencies formed for communities such as Muhammadans, Europeans, Indian Christians etc., only members of each community qualified to be included in the electoral roll thereof, would be entered in the electoral roll of a constituency formed for that community.

A person entitled to be included in the electoral roll of a territorial constituency formed for such a community is not entitled to be included in the electoral roll of a general constituency and to vote therein. For instance a Muhammadan is entitled to be entered in the electoral roll of a Muhammadan territorial constituency and he can vote therein. His name cannot be entered in the general constituency. A person who is entitled to vote in a general constituency cannot be included in the electoral roll of a Muhammadan territorial constituency. Nor can he vote therein.

A person can be included in the electoral roll of only one territorial constituency formed for the purpose of election to Provincial Legislature. Hence he can vote only in one territorial constituency. If he votes in more than one territorial constituency all his votes become void. Even in one territorial constituency a person can vote only once at an election. If he votes more than once all his votes in that constituency become void.

Special constituencies formed for elections to Provincial Legislative Assemblies.—Provisions similar to those above apply in the case of special constituencies formed for purposes of elections to Provincial Legislative Assemblies. They are briefly as follows:—

(1) There will be an electoral roll for each of the special constituencies.

(2) Elections will be held for selecting representatives of (i) Backward classes, (ii) Commerce, Industry, Mining and Planting, (iii) Landholders, (iv) University and (v) Labour in special constituencies.

(3) Electoral rolls for each of those constituencies would be kept and revised from time to time and a person whose name is included therein is entitled to vote.

(4) The general qualifications applicable in the case of persons entitled to be included in the electoral roll of a territorial constituency apply here too, such as that persons to be included in the electoral roll for a special constituency should be British subjects or Rulers or subjects of a Federated State or Ruler or subject of any other native state if so prescribed; and that they should be of the age of 21 years.

(5) Persons of unsound mind who are declared to be so by a competent court cannot be included in the electoral roll of a special constituency. Nor can they vote therein.

(6) Persons undergoing a sentence of transportation or imprisonment or penal servitude cannot be in-

cluded in an electoral roll of a special constituency nor can they vote therein.

NOTE.—When considering the question of qualifications for inclusion of a person's name in the electoral roll of a territorial constituency it should be noted that a person possessing more than one qualification cannot thereby increase his rights [see para 18(1), Legislative Assemblies' Order] and in determining the qualifications of persons to be included in an electoral roll, property owned, held or occupied or payments made by or assessments made on person as a trustee, guardian, administrator or receiver or in any other fiduciary capacity will be left out of account [see para 9, Assemblies' Order and para 15, Legislative Councils Order and also Schedule 6, para (2), Government of India Act, 1935].

General Provisions as to candidates for Election to Provincial Legislatures.—When considering the qualifications which candidates to Provincial Legislatures *viz.*, the Legislative Council and the Legislative Assembly should possess the following provisions are to be noted :

In the following chapter the qualifications of persons to be included in an electoral roll that is to say the qualifications of persons to be voters or electors in each territorial or special constituency are specified. These electors have to elect candidates standing for election in each constituency provided they possess the following qualifications :—

General qualifications of persons to fill seats in Provincial Legislatures.

1. *In Provincial Legislative Councils.*

2. *In Provincial Legislative Assemblies.*

As regards qualifications of candidates for Legislative Councils.—It is provided that

(1) A person shall not be qualified to be chosen to fill a seat which is filled by an election in a territorial constituency unless he is entitled to vote in the choice of a member to fill that seat or any other seat of the same communal description in the same council.

(2) A person shall not be qualified to be chosen to fill a seat to be filled by a person elected by the members of the Legislative Assembly of a province unless he is entitled to vote in the choice of a member to fill some seat in the Legislative Council of that province.

(3) A person shall be qualified to be chosen to fill a seat which is to be filled by a person chosen by the Governor in his discretion if he is resident in the province and is not disqualified to hold a seat by any of the provisions of the Act. [See para 16 (2), (3) and (4) of the Government of India Provincial Legislative Councils' Order.]

As regards the Qualifications of Candidates for a Provincial Legislative Assembly.—It is provided by para 12 of the 5th Schedule of the Government of India Act, 1935, as follows :

A person shall not be qualified to hold a seat in the Legislative Assembly of a Province unless, (a) in the case of a seat to be filled by a woman, by a European, by an Indian Christian, by a representative of backward

areas or backward tribes, by a representative of Commerce, Industry, Mining and Planting, by a representative of Universities, or by a representative of labour he possesses such qualifications as may be prescribed ; and (b) in the case of any other seat he is entitled to vote in the choice of a member to fill that seat or any other seat of a similar class in that province.

NOTE.—The above are general provisions as regards the qualifications of candidates. In the following pages reference should be made to such of the special qualifications as are prescribed in the case of the several constituencies formed for elections to provincial legislatures in different provinces. The special qualifications prescribed for candidates in the various provinces in special constituencies may particularly be noted.

Electors for Madras Legislative Assembly

In the Madras Presidency the right to vote is acquired by (1) residential qualifications, (2) qualifications dependent on taxation, (3) qualifications dependent on property, (4) qualifications acquired by reason of guardianship, (5) qualifications acquired by reason of literacy, (6) qualifications acquired by reason of service in His Majesty's Forces and (7) qualifications acquired by women in a special way. Each one of these qualifications would entitle a person to be included in the electoral roll of a Territorial Constituency.

Residential qualifications.—In order to entitle a person to be included in the electoral roll for a Territorial Constituency it is necessary that a person should.

have resided in a house in the constituency for a period of not less than 120 days in the previous financial year.

NOTE:—Residence means the user of the house sometimes as a sleeping place. A person is not deemed to cease to reside in a house merely because he is absent from it or has another dwelling in which he resides, if he is at liberty to return to the house at any time and has not abandoned his intention of returning.

Qualifications dependent on taxation.—Payment in the previous financial year of, (a) *Motor tax* under the Madras Motor Vehicles Taxation Act, 1931, for the whole of that year; or (b) *Profession tax* for both the half years of that year to a Municipality, Local Board or Cantonment authority in the Province, Profession tax under the Madras City Municipal Act, 1919, the Madras District Municipalities Act, 1920, the Madras Local Boards Act, 1920, or the Cantonments Act, 1924; or (c) *Property tax* for both the half years of that year to a Municipality or a Cantonment authority in the Province under any of the said Acts; or (d) *House tax* for both the half years of that year under the Madras Local Boards' Act, 1920; or (e) occupied as a sole tenant throughout that year a house in respect of which property tax or house tax has been paid for both the half years of that year under any of the Acts mentioned in this paragraph above; or (f) was assessed to income tax.

Qualifications dependent on property.—A person is entitled to be included in the electoral roll of a Territorial Constituency if, (1) he was on the last day of the previous fasli year a *registered Landholder, Inamdar,*

Ryotwari Pattadar or occupancy ryot under the Madras Estates Land Act, 1908 ; or (2) he was assessed in and for the previous fasli year to ground rent payable to the Government ; or (3) he was through the previous fasli year a Kanamdar or Kuzhikanamdar or the holder of a Kudiyiruppu or a Verumpattamdar having fixity of tenure, each of these terms having the meaning assigned to it in the Malabar Tenancy Act, 1929 ; or (4) he was throughout the previous fasli year a mortgagee with possession or lessee under a registered instrument of immovable property in the province (other than house property) of an annual rent value in the case of an Urban Constituency of not less than Rs. 100 and in the case of a Rural Constituency of not less than Rs. 50.

Qualifications dependent on guardianship.—The guardian of a minor who would be entitled were he of full age to be included in the electoral roll of a Territorial Constituency, would be qualified to be included in the electoral roll, if he is on the prescribed date the guardian of a minor.

Qualification by reason of literacy.—A person proved to be literate is also entitled to be included in the electoral roll for any Territorial Constituency.

Qualifications dependent on service in His Majesty's forces.—A retired, pensioned, or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces is entitled to be included in the electoral roll of any Territorial Constituency.

Inclusion of women in electoral rolls.—Women are entitled to be included in the electoral rolls in any

Territorial Constituency if, (a) they are the pensioned widows or pensioned mothers of persons who were officers, non-commissioned officers or soldiers of His Majesty's regular military forces; or (b) her husband possesses the qualifications requisite as shown below :—

Husbands' qualifications entitling women to be Electors.—(1) Payment of income tax by the husband in the previous financial year, (2) being a pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces, (3) occupation by the husband of a house in the City of Madras for not less than 6 months the annual value of which was not less than Rs. 60, (4) was assessed in the previous financial year to tax on companies, (5) was assessed in the previous financial year to an aggregate amount of not less than Rs. 3 in respect of either or both of the property tax or profession tax, (6) was on the last day of the previous fasli year registered as a Ryotwari Pattadar or an Inamdar of land the annual rent value whereof is not less than Rs. 10, (7) was on the last day of the previous fasli year registered jointly with the proprietor under Sec. 14 of the Malabar Land Registration Act, 1895, as the occupant of land the annual rent whereof is not less than Rs. 10, (8) was on the last day of the previous fasli year a registered landholder holding an estate the annual rent value whereof is not less than Rs. 10, (9) held on the last day of the previous fasli year as ryot or as tenant under a landholder land the annual rent value whereof is not less than Rs. 10, and (10) held 'throughout the previous fasli year' under a Ryotwari

Pattadar or an Inamdar a registered lease of land the annual rent value whereof is not less than Rs. 10.

Special qualifications for Scheduled castes (Madras Legislative Assembly).—The Government of India (Provincial Legislative Assemblies Order, 1936), makes provision in para 8 of Part II, for special qualifications in the case of Scheduled castes for inclusion in an electoral roll of any territorial constituency subject to the general provisions. They are as follows:—

Occupation as owner or lessee of a house in a Municipality, a Cantonment, or an area subject to the jurisdiction of a local board of an annual rental value of not less than Rs. 18, or a house elsewhere with an annual rent value of not less than Rs. 12.

Backward Tribes special constituency mentioned in Part VII of 2nd Schedule to the Order. (1 seat).

Qualifications.—(a) Being a member of the Backward tribes and (b) was throughout the previous fasli year a mortgagee with possession or lessee under a registered instrument of immoveable property (other than house property) of an annual rent value of not less than Rs. 50 [see para 10 (2) of the order read with para 3, Sub-clause (d) of Part II of 6th Schedule to the Act].

Commerce, Industry and Planting Constituencies (6 Seats).—For inclusion in the electoral roll of a Commerce, Industry and Planting Constituency a person should be, (1) a qualified member of one of the constituent bodies; or, (2) a nominee in that behalf of a

firm, Hindu joint family or corporation which is a qualified member of one of those bodies.

NOTE.—A person is a qualified member who is a subscribing member shown in the list of members and paid all subscriptions accrued due before the end of the previous financial year. He should further be engaged in commerce or industry having a place of business in the province. Besides, in the case of an individual, a firm or a Hindu joint family, if he or it was assessed to income-tax in any one of the 5 financial years preceding a prescribed date on an income of not less than Rs. 10,000. In the case of a corporation, it is necessary it should have a paid-up capital of not less than a lakh of rupees for it to become a qualified member.

Landholders' Constituencies (6 seats).—The qualifications for inclusion in electoral roll for a Landholders' Constituency are if he is a Zamindar, Janmi or Malikhanadar having resided in a house in the constituency for not less than 120 days in the previous financial year and having (a) annual income of not less than Rs. 3,000 from an estate in the province or from a Government in British India or partly from such an estate and partly from such an allowance ; or (b) being registered as the Janmi of land in the province on which the assessment is not less than Rs. 1,500 per annum.

Labour Constituencies (6 seats).—The qualifications for inclusion in an electoral roll for a Labour Constituency are as follows :—

Qualifications for inclusion in the electoral roll of a Trade Union Constituency of Constituent Trade Unions

i.e., (those recognised and certified by the Governor)¹ are:—(1) Residence for a period of not less than 6 months in the year ending on the prescribed date and ; (2) Employment within the province in the case of a person to be included in the electoral roll for the Railway Trade Union, (3) Membership, honorary membership or being an official of a constituent Trade Union present and for at least 12 months, but not employed wholly or mainly in a clerical, supervisory, recruiting or administrative capacity [Para 25(2)] and not in the case of an ordinary member of the Union in arrear with his subscription thereto, (4) *In the case of a non-union labour constituency* having worked for remuneration for not less than 180 days whether successive or not in the year ending on the prescribed date at a rate not greater than Rs. 300 per month at one or more qualifying industrial establishments.

University Constituency.—Qualifications for inclusion in the electoral roll for the University Constituency:—(1) Having a place of residence in India and, (2) being a member of the Senate of the Madras, the Andhra or the Annamalai Universities, or (3) being a graduate for at least 7 years of one of those Universities

¹ Such Unions should be certified by the Governor to be a bona fide Trade Union existing for industrial and provident purposes for at least 2 years and registered as a Trade Union for at least one year and having at least 250 ordinary members who have paid subscriptions for the whole of that year and have complied with the requirements of the Indian Trade Unions Act, 1926, as regards inspection of books and audit of accounts.

and registered as such in the University Register throughout the 2 years immediately preceding the prescribed date.

Electors for the Madras Legislative Council

Residential Qualifications.—(1) Residence in a house in the constituency for a period of not less than 120 days in the previous financial year *and any one of the following qualifications* (2) Being an assessee to income-tax in the previous financial year to income-tax on a total income of not less than Rs. 7,500; or, (3) Being a registered landholder, Inamdar, Ryotwari Pattadar or occupancy ryot under the Madras Estates Land Act in the last day of the previous fasli year in respect of land in the province of which the annual rental value is not less than Rs. 300; or, (4) Being a holder on the last day of the previous fasli year of an estate in the province of an annual income of not less than Rs. 1,500; or, (5) Being in receipt in British India of Malikhana allowance of not less than Rs. 500 per annum; or, (6) Being a holder of title, order or decoration conferred by His Majesty not lower than Diwan Bahadur, Sardar Bahadur, Khan Bahadur, Rai Bahadur or Rao Bahadur; or, (7) Being a pensioner of Government Civil, Military or Political of not less than Rs. 250 per month; or, (8) Being in British India (a) a non-official member of any Legislature or (b) a member of an Executive Council or (c) a minister; or, (9) Being of any University constituted by law a Chancellor, Pro-Chancellor, Pro-Vice Chancellor, Fellow or Hon. Fellow, member of Senate or Court; or, (10) Being a Judge of Federal Court, High Court, Chief Court or Judicial

Commissioner's Court in British India ; or, (11) Being a Mayor, Sheriff of Bombay or Calcutta or Madras ; or, (12) Being a non-official President of a District Board in the province or the non-official Chairman of a Municipal Council in the province ; or, (13) Being the non-official President of any Central Bank of Banking Union which is a Registered Society under section 2 of the Madras Co-operative Societies' Act, 1932 and does not operate solely outside the province.

Female Franchise.—Besides the above qualifications the following additional qualifications entitle women to be included in the territorial constituency if they are (1) the wives of persons assessed to income-tax in the previous financial year on a total income of not less than Rs. 20,000 ; or, (2) the wives of holders of land or of an estate in the province of an annual income of not less than Rs. 3,000 ; or, (3) wives of Registered Inamdars, Ryotwari Pattadars or occupancy ryots under the Madras Estates Land Act, 1908, of land of the annual rent value of not less than Rs. 1,500 ; or, (4) wives of persons who are in receipt from any Government in British India of Malikhana allowance of not less than Rs. 1,500 per annum ; or, (5) wives of holders of title, order, decoration not lower than Dewan Bahadur, Sardar Bahadur, Khan Bahadur, Rai Bahadur or Rao Bahadur or being a pensioner of Government, Civil, Military or Political of not less than Rs. 250 per month.

Special qualifications for Scheduled castes.—A member of the Scheduled castes would be entitled to be included in the electoral roll for any territorial constituency if during or on the last day of the previous

fasli year he was, (a) assessed to income-tax, (b) holding an estate in the province the rent value of which is not less than Rs. 100 ; or, (c) a Registered Inamdar, Ryotwari Pattadar or occupancy ryot under the Madras Estates' Land Act, 1908, of land in the province of the annual rental value of not less than Rs. 50 ; or, (d) a Kanamdar or a Kuzhi Kanamdar or a Verumpattamdar having a fixity of tenure ; or, (e) a mortgagee with possession or a lessee under a registered instrument of immoveable property in the province (other than house property) of not less than Rs. 100 annual rent value ; or, (f) registered jointly with a proprietor as an occupant of land of which the annual rent value is not less than Rs. 100 ; or, (g) a holder of land as ryot or as tenant under a landholder in the province, the annual rent value of which is not less than Rs. 100 ; or, (h) assessed to property tax, profession tax or house tax to an aggregate amount of not less than Rs. 20.

Electors for the Bombay Legislative Assembly

NOTE :—In Bombay, constituencies are specially formed for electing women members. Out of general seats allotted to general constituencies seats are reserved for Scheduled castes and for Marathas. In order to entitle a person to be included in the electoral roll for women's constituency a person should have resided for 180 days in the previous financial year in a house in the constituency.

The following are the constituencies formed for election to the Bombay Legislative Assembly :—

(1) General constituencies, (2) Muhammadan constituencies

encies, (3) 'Women's constituencies, (4) Anglo Indian constituencies, (5) European constituencies, (6) Indian Christian constituencies, (7) Commerce and Industry constituency, (8) Landholders' constituency, (9) Labour constituency, and (10) 'University constituency.

A woman, a European, or an Indian Christian would not be entitled to be chosen to fill a woman's, European's or an Indian Christian seat unless each one is respectively entitled to vote in the choice of a member to fill in their respective constituencies that seat or some other seat.

NOTE.—In order to entitle persons to be included in the Bombay electoral roll, it is necessary that they should satisfy certain requirements as to (1) *residence* or (2) *payment of income-tax*, or (3) *ownership of property*, or (4) *possess certain educational qualifications*, or (5) *be in service in His Majesty's Forces*, or (6) in the case of women that they should have certain additional qualifications, (7) or in the case of Scheduled castes that they should have certain special qualifications.

Residential qualification.—The Schedule to the Government of India Act (6th Schedule) provides that no person shall be qualified to be included in the electoral roll for a territorial constituency unless he satisfies the requirement as to residence for 180 days in a house in the constituency within the last financial year.

Residential qualification for European or Anglo Indian in a Territorial constituency, will be satisfied by

their residence for a period of not less than 180 days in a house in the province in the previous financial year.

Besides the residential qualification an elector for the Bombay Legislative Assembly is required to possess any one of the following qualifications.

Qualifications dependent on taxation.—Assessment to income-tax within the previous financial year :

Qualifications dependent on property.—(1) The holding in his own right or occupies as a tenant, alienated or unalienated land or land on talukdari tenure being land in the constituency assessed at or of the assessable value of not less than Rs. 8 land revenue ; or, (2) Being the alienee of the right of the Government to the payment of rent or land revenue amounting to not less than Rs. 8 in respect of alienated land in the constituency ; or, (3) Being a Khot or sharer in a Khoti village in the constituency or sharer in a Bhagdari or Narwadari village in the constituency and is responsible for the payment of not less than Rs. 8 land revenue ; or, (4) Being in occupation in the constituency as owner or tenant of a house or building situate in the City of Bombay or in a Municipal borough, Municipal district, cantonment or notified area and having at least the *appropriate value*.

NOTE.—*Appropriate value* means, (a) in relation to a house or building situate within the City of Bombay, an annual rental value of Rs. 60, (b) in relation to a house or building situate outside the City of Bombay but in an area in which a tax is based on the annual rental value of houses or buildings an annual rental value of

Rs. 18, (c) in relation to any other house or building a capital value of Rs. 750.

Qualification dependent on education.—The passing of the Matriculation Examination or the School Leaving Examination of the University or another examination prescribed as equivalent to either of those examinations or any other prescribed examination not lower than a Vernacular Final Examination.

Qualification by reason of service in His Majesty's forces.—Being a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

FEMALE ELECTORS FOR BOMBAY LEGISLATIVE ASSEMBLY

Women are additionally qualified by being (1) pensioned widows or pensioned mothers of persons who were officers, non-commissioned officers or soldiers of His Majesty's regular military forces, (2) wives of persons whose husbands possess any one of the following qualifications besides satisfying the requirement as to residence in relation to the constituency in question, i.e. (a) being assessed to income-tax in the previous financial year; or (b) he being a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces, or (c) being in the constituency he holds in his own right or occupies as tenant alienated or unalienated land or land on talukdari tenure assessed at or of the assessable value of not less than Rs. 16 land revenue in the Panch Mahals subdivision of the Broach and Panch Mahals District or in the Ratnagiri District or not less than Rs. 32 land

revenue elsewhere ; or, (4) being the alienee of the right of the Government to the payment of rent or land revenue in respect of alienated land in the constituency amounting to not less than Rs. 16 in the Panch Mahals subdivision of the Broach and Panch Mahals District or in the Ratnagiri District and to not less than Rs. 32 elsewhere ; or, (5) he is Khot or sharer in a Khoti village in the constituency or a sharer in a Bhagdari or Narwadari village in the constituency and in either case is responsible for the payment in the Panch Mahals subdivision of the Broach and Panch Mahals District or in the Ratnagiri District of not less than Rs. 16 land revenue and elsewhere of not less than Rs. 32 land revenue ; or, (6) he occupies as owner or tenant in the constituency a house or building situate in the City of Bombay or in a Municipal borough, Municipal District, cantonment or notified area and having at least the appropriate value.

NOTE.—*Appropriate value* here means in relation to a house or building in the City of Bombay an annual rental value of Rs. 120, in relation to a house or building in the Panch Mahals subdivision of the Broach and Panch Mahals District or the Ratnagiri District situate in an area in which any tax is based on the annual rental value of houses or buildings an annual rental value of Rs. 24, in relation to any other house or building in the Panch Mahals subdivision of the Broach and Panch Mahals District or the Ratnagiri District a capital value of one thousand rupees, in relation to a house or building in any other area in which any tax is based on the annual rental value of houses or buildings an

annual rental value of Rs. 36 and in relation to any other house or building a capital value of Rs. 1,500.

Special qualifications.—*In the case of Scheduled castes* are: (i) that an elector should be shown as literate; or, (ii) if he was at any time during the year ending on the 31st day of December next preceding the prescribed date a person actually performing in the province the duties of an inferior village officer whether hereditary or not but not a person dismissed and not reinstated.

In the case of the Reserved seat for Backward tribes in West Khandish District.—In addition to the other qualification as above stated if he is a member of a backward tribe who is entitled to vote in the choice of a member to fill that seat or some other seat and either, (a) a holder in his own right or occupier as tenant alienated or unalienated land in the constituency which is assessed at or of the assessable value of not less than Rs. 4 land revenue per annum; or, (b) being the alienee of the right of Government to the payment of rent or land revenue amounting to not less than Rs. 4 per annum in respect of the alienated land in the constituency; or, (c) having at any time during the year ending on 31st day of December next preceding the prescribed date actually performing in the constituency the duties of the office of a Patil or of an inferior village officer whether hereditary or not; or, (d) being in receipt of cash allowance or salary from Government of not less than Rs. 10 per month.

In the case of the Commerce and Industry constituencies (7 seats).—(i) Being a qualified member of one

of the constituent bodies or is the nominee in that behalf of a firm, Hindu joint family or Corporation which is a qualified member of one of those bodies called the constituent bodies, by having paid subscriptions which accrued due before the end of the previous financial year and (ii) engaged in Commerce and Industry and has a place of business in the province and (iii) in the case of an individual firm or a Hindu joint family was in any one of the 5 financial years preceding a prescribed date assessed to income-tax on an income of not less than Rs. 10,000, (iv) and in the case of a corporation has a paid up capital of not less than a lakh of rupees and no person can be nominated on behalf of a *firm or joint family* unless he is a member or one who is or has for 6 months been authorised to sign documents in its name in ordinary course of business, or of a *corporation* unless he is a Director, Managing Agent or Manager or Secretary thereof or a person who is or has for at least 6 months authorised to sign documents in its name in the ordinary course of business.

*In the case of Landholders' constituency (2 seats).—*For inclusion in electoral roll for Landholders' constituency, (a) Residence for 180 days in a house in the province and (b) Inclusion in the list under resolution of Government of Bombay Political Department No. 6265, dated 21st September 1909 or being sole alienee of the right of Government to payment of rent or land revenue in respect of an entire village in the constituency or was sole alienee of the right of Government to the payment of rent or land revenue in respect of an entire village situate within the constituency or was the sole holder on talukdari tenure of such village.

In the case of Labour constituencies (7 seats).—

(a) Residence in the province for a period of not less than 6 months in the year ending the prescribed date except in the case of a member of a Trade Union of seamen and (b) Membership or Honorary membership or being an official for at least 12 months in a recognised Trade Union referred to in the order as constituent Trade Unions but not employed wholly or mainly in clerical, supervisory, recruiting or administrative capacity; or, (c) In the case of the Sholapur Textile Labour constituency employment at qualifying factories, i.e., those situated within 5 miles of the boundary of the Municipal borough of Sholapur for not less than 180 days on remuneration not greater than Rs. 300 per month; or, (d) Employment within the province in the case of the Railway Unions' constituency.

In the case of the University constituency.—A person having a place of residence in India and either, (a) being a member of the Senate of the Bombay University or, (b) a graduate of 7 years' standing of the Bombay University and registered as such in the University register throughout the 2 years immediately preceding the prescribed date.

Electors for the Bombay Legislative Council

Qualifications for Electors for the Bombay Legislative Council: Subject to the general provisions.—

(1) Residence for 180 days in the previous financial year in the case of the Bombay City constituency being either a general or a Muhammadan constituency or in any other constituency or in the case of European constituency residence for the like period in the province as

fully shown in the chapter on Bombay Electoral Rolls ; or (2) Being assessed to income-tax on an income of not less than Rs. 15,000 in the previous financial year ; or (3) Being a Deccan Sardar or a Gujarat Sardar ; or (4) Being the sole alienee of the right of Government to payment of rent or land revenue in respect of an entire village within the constituency or a sole talukdar holding a talukdari tenure of such village, or is a Khot responsible for payment of land revenue of such village ; or (5) Being the owner or occupier as tenant alienated or unalienated land or land on talukdari tenure in a constituency assessed at or of an assessable value of not less than Rs. 350 land revenue ; or (6) Being the alienee of the right of Government to the payment of rent or land revenue amounting to not less than Rs. 350 in respect of alienated land in the constituency ; or (7) Being a Khot or sharer in a Khot village or a sharer in a Bhadari or Narwadari village the said villages being situated in the constituency and responsible for payment of not less than Rs. 350 by way of land revenue ; or (8) Being holder of a title, order or decoration conferred by Government not lower than Diwan Bahadur, Sardar Bahadur, Khan Bahadur, Rai Bahadur or Rao Bahadur ; or (9) Being a pensioner of Government, Civil, Military, or Political of not less than Rs. 250 per month ; or (10) Being in British India, (a) a non-official member of any legislature ; or (b) a member of an executive council ; or (c) a minister ; or (11) Being of any University constituted by law a Chancellor, Pro-Chancellor, Pro-Vice Chancellor, Fellow or Honorary Fellow Member of Senate or Court ; or (12) Being a Judge of a Federal Court, High Court, Chief Court or Judicial Commissioner's Court in British India ; or (13) Being a

Mayor or Sheriff of Bombay or Calcutta or Madras ; or (14) Being a non-official president of a municipality, or a city municipality, or of a district, local board in the province ; or (15) Being a non-official chairman of the Bombay provincial co-operative bank or of a co-operative society or bank registered under the Co-operative Societies' Acts, 1912.

In the case of Women.—In the case of a woman residing in the province if her husband possesses any of the following qualifications, *i.e.* to say :—(a) Being the assessee of income-tax in the previous financial year on an income of not less than Rs. 30,000 ; or (b) Being a Deccan Sardar or a Gujarat Sardar ; or (c) Being an alienee of the right of the Government to the payment of rent or land revenue in respect of a village or a Talukdar holding a talukdari tenure land, or a co-sharer holding a talukdari tenure a share in land or a Khot responsible for payment of land revenue in respect of a village each one situated in a constituency and assessed at not less than Rs. 2,000 land revenue ; or (d) Being a holder in his own right of alienated or unalienated land or land on talukdari tenure situated in the constituency and assessed or of the assessable value of not less than Rs. 2,000 land revenue ; or (e) Being a holder of title, order, decoration or pension as described in paras 8 and 9 above.

In the case of Scheduled castes.—(i) Being the owner or occupier as tenant alienated or unalienated land or land on talukdari tenure in a constituency assessed at or of the assessable value of not less than Rs. 50 land revenue ; or (ii) Being the alienee of the right of Government to the payment of rent or land

revenue amounting to not less than Rs. 50 in respect of alienated land in the constituency ; or (iii) Being a Khot or sharer in a Khoti village or sharer in a Bhagidari or Narwadari village in the constituency and responsible for payment of not less than Rs. 50 land revenue ; or (iv) Being occupier as owner or tenant of a house or building situate in the City of Bombay or Municipal borough, Municipal District, cantonment or notified area and having at least the appropriate value, *i.e.*, in the case of a house or building the annual rental value of Rs. 201 where the tax is based in any area on the annual rental value or in relation to any other house or building a capital value of Rs. 3,350.

Electors for the Bengal Legislative Assembly

THE BENGAL ELECTORAL ROLL

In order to entitle a person to be included in the electoral roll in Bengal it is necessary (1) that a person should possess certain residential qualifications ; or (2) become qualified by reason of the payment of taxes ; or (3) own or possess property ; or (4) possess educational qualifications ; or (5) get qualified by reason of service in His Majesty's forces as shown below.

The persons that are qualified to be included in the electoral roll may be classified into male and female voters.

Residential qualification.—In Bengal a person is not entitled to be included in an electoral roll for any constituency unless he has a place of residence which means that he should have a place where he ordinarily and actually resides during the greater part of the year.

What is residence in the Calcutta constituency ?—
In order to entitle a person to be included in the electoral roll of the Calcutta constituency it is enough he has a place of residence in Calcutta and a place of business. In the case of a European, however the provision as to residence is complied with if he is actually employed anywhere in Bengal but is absent from Bengal on leave from his employment.

Besides the Residential Qualification an elector for the Bengal Legislative Assembly is required to possess any one of the following qualifications :—

Qualification dependent on Taxation.—(1) Having paid before the expiration of the previous year any sum as tax under the Bengal Motor Vehicles Tax Act, 1932 in respect of that year ; or (2) Being assessed during the previous year to income-tax ; or (3) Having paid in respect of that year either directly or indirectly any sum as consolidated rate-tax or license fee to the Corporation in respect of which an entry is made in the Corporation records ; or (4) Having paid during and in respect of the previous year municipal or cantonment taxes or fees of not less than As. 8 or road and public works cesses under the Cess Act, 1880 of not less than As. 8 or Chaukidari tax under the Village Chaukidari Act, 1870 of not less than As. 6 or Union rate under the Bengal Village Self Government Act, 1919 of not less than As. 6.

Property qualification.—Occupation during the previous financial or Bengali year by virtue of his employment a house in the province the annual valuation of which is not less than Rs. 42.

Educational qualification.—Having passed the Matriculation Examination or another examination which is prescribed to be equivalent thereto or any other examination not lower than a Final Middle School Examination.

Qualification by reason of service in His Majesty's Forces.—Being a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

FEMALE ELECTORS FOR THE BENGAL LEGISLATIVE ASSEMBLY

Women will also be qualified to be included in the electoral roll for any territorial constituency if they are (a) the pensioned widows or the pensioned mothers of persons who were officers, non-commissioned officers or soldiers of His Majesty's regular military forces; or (b) if their husbands possess the qualifications requisite for the purpose; or (c) if they are shown in the prescribed manner to be literate. (But this qualification will only come into operation after 3 years after the formation and the operation of the provisions as regards the Governors' provinces.).

In the Calcutta Constituency.—(1) Being the owner and occupier of any land or building separately numbered and valued for assessment purposes at not less than Rs. 150 per annum or as the owner or occupier of any land or building in Calcutta separately numbered and valued for assessment purposes at not less than Rs. 300 per annum and paid during that year his share of the consolidated rate on the land or building and the

same is entered in the Municipal assessment book ; or (2) having paid during and in respect of the previous year on his sole account and in his own name not less than Rs. 24 in respect of the taxes levied under Chapter XI or Chapter XII of the Calcutta Municipal Act, 1923 ; or (3) his name is entered in the Municipal assessment book in respect of any land or building in Calcutta or having paid not less than Rs. 24 of the consolidated rate in the previous year in respect of any land or building in Calcutta and the same is evidenced by entry in Municipal assessment book.

Urban Constituency.—Having paid in the Municipality of Howrah, municipal taxes or fees of not less than Rs. 3 or in any other municipal area or cantonment in the province, municipal or cantonment taxes or fees of not less than Rs. 1-8-0 in respect of the previous year.

In a Rural Constituency.—Having paid not less than Rs. 1-8-0 in respect of municipal taxes or fees of not less than Re. 1 in respect of road and public works cesses under the Cess Act, 1880 or not less than Rs. 2 in respect of Chaukidari tax under the Village Chaukidari Act, 1870 or in respect of Union rate under the Bengal Village Self Government Act, 1919 during the previous year.

Any Territorial Constituency.—Being either a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces or having been assessed in the previous year to income-tax or paid before the expiry of the previous year any sum as tax under the Bengal Motor Vehicles Act, 1932 in respect of that year.

Special qualifications for Electors of Darjeeling General Constituency (comprising any part of the Sadar Kalimpong and Kurseong subdivisions of the Darjeeling District).—(a) Payment during and in respect of the previous year rent of not less than Rs. 20 for any land situate in the municipal area or for any hired building or rent of not less than Rs. 2 for any land in the province not situate in a municipal area; or (b) in the case of a woman, she being the wife of a person who during and in respect of the previous year has paid rent of not less than Rs. 60 for any land in the province situate in a municipal area or for any hired building in the province or rent of not less than Rs. 6 for any land in the province not situate in a municipal area.

THE BENGAL LEGISLATIVE ASSEMBLY

In the case of Commerce, Industry, Mining and Planting Constituencies (19 seats).—The qualifications for voting and for standing for election on behalf of the above constituencies in Bengal are the same as in Bombay.

Landholders' Constituency (5 seats).—For inclusion in electoral roll in the landholders' constituency the qualifications are having a place of residence in the constituency; and (a) in the case of the *Burdwan and Presidency Divisions* the holding in a person's own right as a proprietor or as a permanent tenure holder one or more estates or shares of estates or one or more permanent tenures or shares of such tenures held direct from a proprietor, and paid in respect thereof land revenue or rent or both amounting not less than Rs. 3,000 or road and public works cesses amounting to not less than

Rs. 700 ; or (b) in the case of the *Decca Rajshahi and Chittagong Divisions* the holding in the same circumstances as in Burdwan and Presidency Divisions estates or permanent tenures but paid land revenue or rent or both amounting to not less than Rs. 2,000 or road and public cesses amounting to not less than Rs. 500.

In the case of the Labour Constituencies—

(a) *Trade Union Constituencies.*—(1) Residence in the province for a period of not less than 6 months in the year ending on the prescribed date. (2) Being a member, honorary member or official in a trade union certified by the Governor as existing wholly or mainly for industrial and provident purposes, existing for at least 2 years and registered for at least 1 year, with 250 ordinary members in the previous year who paid subscriptions and who have complied with the requirements of the Trade Unions' Act, 1926, as regards inspection of books and audit, but not employed wholly or mainly in a clerical supervisory, recruiting or administrative capacity and in the case of an ordinary member not in arrears with his subscription thereto. (3) Employment within the province in the case of the Railway Trade Union constituency and membership, honorary membership or being an official of a constituent Trade Union for at least 12 months and in the case of an ordinary member not in arrears of subscription of the Union. (4) In the case of Water Transport Trade Union, nomination by the executive of a constituent Trade Union for inclusion in electoral roll at one person for every complete 500 members who have not been in arrears with their subscription and who have been members of the Union for not less than 6 months.

(b) Factory and Colliery Labour Constituency.—

(1) Residence in the province for a period of not less than 6 months in the year ending on the prescribed date.

(2) Work for remuneration for not less than 180 days whether successive or not in the year ending on the prescribed date whether successive or not at not more than Rs. 300 per month at one or more qualifying industrial establishment in the case of a factory constituency.

(3) In the case of a colliery constituency employment for a continuous period of not less than 60 days in the year ending on the prescribed date at not more than Rs. 300 per month at one or more qualifying industrial establishments.

*(c) Tea garden Labour Constituency.—*Employment during the year ending on the prescribed date and worked as a permanent employee in one or more qualifying Tea gardens on not less than 180 days, i.e., living either within the boundary of the garden or on land provided for the purpose by the owners thereof, [para 25(2)]. A person will not be entitled to fill any of the seats unless he belongs to one or other of the qualifying tribes or castes as are mentioned in the order and satisfies certain other requirements as are mentioned therein. (See para 26 of the Provincial Legislative Assemblies Order, Part 4, para 26).

*In the case of the University Constituencies (2 seats), i.e., the Calcutta University Constituency and the Dacca University Constituency.—*A person having a place of residence in India and either (a) a member of the Senate of the Calcutta or of the Dacca University; or (b) a graduate of standing and registered as such in the University register throughout the 2 years immedi-

ately preceding the prescribed date or in the original preparation of electoral roll within 3 years of the establishment of the Provincial Legislatures, a graduate registered on 30th September preceding a prescribed date of the Calcutta University, and in the case of a graduate of the Dacca University registered on the 8th July preceding a prescribed date.

Electors for the Bengal Legislative Council

The following qualifications entitle a person to be an elector to the Bengal Legislative Council.

Residential qualification.—In order to entitle a person to be an elector to the Bengal Legislative Council it is necessary that he should have a place of residence, i.e., that he would have a place where he ordinarily resides during the greater part of the year in the constituency.

Subject to the residential qualification an elector should have any one of the following qualifications :—

- (1) Qualification dependent on property ; or
- (2) being an assessee to income tax in the previous financial year on a total income of not less than Rs. 5,000 ; or
- (3) being the holder of title, order or decoration conferred by the Government not being lower than Diwan Bahadur, Sardar Bahadur, Khan Bahadur, Rai Bahadur, Rao Bahadur ; or
- (4) being a pensioner of Government, Civil, Military or Political of not less than Rs. 250 per month ; or

(5) being (a) a non-official member of any legislature in British India ; or (b) a member of an executive council or a minister in British India ; or (c) a Chancellor, Vice Chancellor, Pro-Chancellor, Pro-Vice Chancellor, Fellow or Honorary Fellow or a member of the Senate or Court of any University constituted by Law in British India ; or (d) a Judge of the Federal Court or any High Court, Chief Court or Judicial Commissioner's Court in British India ; or (e) the Mayor or Sheriff of Madras, Calcutta, or Bombay ; or (f) the non-official chairman or vice chairman of a municipality in the province or of a District Board in the province ; or (g) the non-official chairman or vice chairman of any Co-operative Central Bank or Union or Provincial Co-operative Federation which is a registered society under the Co-operative Societies Act, 1912 and does not operate solely outside the province.

Additional qualifications in the case of non-Muhammadan Territorial Constituencies.—Holding in the previous year as a proprietor or a permanent tenure holder one or more estates or shares of estates permanent tenure or tenures or shares therein direct from a proprietor and having paid rent or land revenue or both of not less than Rs. 2,000 or road and public works cesses amounting to not less than Rs. 500 in the Burdwan and Presidency Divisions rent or land revenue or both of not less than Rs. 1,500 or road and public works cesses amounting to not less than Rs. 350 or *within the Dacca Rajshahi and Chittagong Divisions.*

Muhammadan Territorial Constituencies.—In the above circumstances as those specified in the case of non-Muhammadan Territorial Constituencies a Muham-

madan would be entitled to be an elector if he paid land revenue or rent or both amounting to not less than Rs. 250 or road and public works cesses amounting to not less than Rs. 50.

Additional qualifications for non-Muhammadian women electors.—The holding by the husband of a woman of any of the following qualifications would entitle a woman to be an elector :—(a) The holding of a title, order or decoration or the drawing of a pension as mentioned in the above paras ; or (b) being assessed to income-tax in the previous financial year of a total income of not less than Rs. 12,000 ; or (c) having held in Burdwan and Presidency Divisions in the previous year as proprietor one or more estates or shares and paid in respect thereof land revenue amounting to not less than Rs. 7,500 or road and public works cesses amounting to not less than Rs. 1,875 ; or (d) having held in Dacca Rajshahi and Chittagong Divisions in the previous year in his right as a proprietor one or more estates or shares of estates or one or more permanent tenures or shares of such tenures held direct from a proprietor and paid land revenue of not less than Rs. 5,000 or road and public works cesses of not less than Rs. 1,250.

Additional qualifications for Muhammadan women electors.—The possession by a husband of a woman of any of the following qualifications would entitle her to be an elector :—(a) Being assessed to income-tax in the previous year on an income of not less than Rs. 6,000 ; or (b) having held estates or shares thereof or permanent tenures or shares thereof from a proprietor and paid land revenue of not less than Rs. 600 or road and public works cesses of not less than Rs. 125.

Electors for the Assam Legislative Assembly

THE ASSAM ELECTORAL ROLL

Residential qualification.—In order to get qualified for being an elector for the Assam Legislative Assembly it is necessary that in Assam he should have a place of residence in the constituency, i.e., he should ordinarily live in the constituency or have his family dwelling place in the constituency and occasionally occupy it.

Residential qualification in the case of Europeans.—In the case of Europeans actual employment anywhere in Assam would be enough to qualify them to be electors for the Legislative Assembly although he is absent from Assam on leave from his employment. Subject to the above, any of the following qualifications entitle a person to be included in the electoral roll for any territorial constituency.

Qualifications dependent on taxation in previous financial year.—(a) Being assessed to income-tax in the previous financial year; or (b) being assessed in respect of municipal or cantonment rates or taxes in the aggregate amount of not less than Rs. 2 or in the Sylhet Municipality of not less than Rs. 1-8-0 or to a tax of not less than Re. 1 in a small town or in the District of Sylhet or District of Cachar or District of Goalpara to a tax of not less than As. 8 under the Village Chaukidari Act, 1870.

Qualifications dependent on property.—(a) Ownership of land on which land revenue is assessed or assessable at not less than Rs. 7-8-0 per annum; or (b) liability to pay a local rate of not less than As. 8 per annum; or (c) the holding of land throughout the previ-

ous financial year or previous Bengali year from a landlord in any of the Districts of Lakhimpur, Sibsagar, Darang, Nowgong, or Kamrup or in the Garo Hills and the payment to landlord of rent of not less than Rs. 7-8-0 in respect thereof.

NOTE :—Land situated and local rates levied, in the Districts of Sylhet, Cachar and Goalpara will be left out of account.

Educational qualification.—Having passed the Middle School Leaving Certificate Examination or any other examination prescribed.

Qualification by reason of service in His Majesty's forces.—Being a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces of the Assam Rifles.

Additional qualifications for women.—Besides the above any of the following additional qualifications entitle women to be voters for the Assam Legislative Assembly.

(1) Being the pensioned widow or pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces or of the Assam Rifles ; or

(2) Being a literate woman ; or

(3) Being the wife of a retired, pensioned or discharged officer, non-commissioned officer, or soldier of His Majesty's regular military forces or the Assam Rifles ; or

(4) Being the wife of a person assessed to income-tax in the previous financial year ; or

(5) Being the wife of a person assessed in the previous financial year in the constituency in respect of municipal or cantonment rates or taxes in the Nowgong Municipality to not less than Rs. 2, in the Sylhet Municipality to not less than Rs. 1-8-0, or elsewhere in the province to not less than Rs. 3; or

(6) Being the wife of a person assessed in the previous financial year in the constituency to a tax of not less than Re. 1 in a small town; or

(7) Being the wife of a person assessed in the previous financial year in the District of Sylhet, the District of Cachar, or the District of Goalpara to a tax of not less than Re. 1 under the Village Chaukidari Act, 1870; or

(8) Being the wife of a person elsewhere than in the above districts and owning land therein the land revenue of which has been assessed or is assessable at not less than Rs. 15 per annum; or

(9) Being the wife of a person who is liable to pay a local rate in the constituency of not less than Re. 1 per annum.

BACKWARD AREAS AND TRIBES

In order to entitle a person to be included in the electoral roll for any territorial constituency for backward areas and tribes it is necessary that a person should belong to a backward tribe and subject to the qualifications as those for inclusion in the electoral roll for general constituencies.

In respect of Garo Hills (North and South) Constituencies.—The franchise qualifications are : (a) having a place of residence and (b) being a nokma in the constituency recognised as such by the Government.

Shillong constituency and Jowai Constituency.—

(a) Having a place of residence in the constituency ; or
(b) having not been included in any other territorial constituency other than a women's constituency ; or
(c) having been assessed to income-tax or house tax or municipal rates or cantonment rates or taxes in the constituency of not less than Rs. 2 in the aggregate or would have been assessed to house tax had he not been exempt by a competent authority ; or (d) having passed the Middle School Examination or any other examination prescribed as equivalent thereto ; or (e) being a retired, pensioned or discharged officer, non-commissioned officer, soldier or man of His Majesty's regular military forces of the Assam Rifles or of a British Indian Police Force but not in every case dismissed or discharged for disciplinary reasons ; or (f) being a pensioned, widow or mother of a person who was a non-commissioned officer, soldier or man of His Majesty's regular military forces of the Assam Rifles or of British Indian Police force ; or (g) in the case of the Shillong constituency, being the owner of land in any British Village of the Shillong subdivision outside the Shillong Municipality and cantonment assessed or assessable at not less than Rs. 2-8-0 per annum ; or (h) being a man nominated by a Khasi or Synteng (Pnar) woman qualified to be included in either of the constituencies in her stead.

Mikir Hills constituency.—Being a village headman of a village in the constituency recognised as such by the Government.

Commerce, Industry and Planting constituencies (11 seats).—These can be subdivided into (1) European Planting and European Commerce and (2) European

Commerce and Indian Commerce Constituencies. The extent of those constituencies is specified in the Legislative Assemblies Order. The franchise qualifications are :

For the European and Indian Planting constituencies.—(a) Being the superintendent or manager or an engineer or medical officer employed on any tea estate in the constituency under European control; or (b) being a proprietor or a co-proprietor nominated by several co-proprietors owning more than the proprietary interests in the estate in lieu of the superintendent or manager of the estate provided he has a place of residence in the province.

For the European, Commerce and Industry constituency.—(a) Being a European carrying on business in the constituency on his own account and not in partnership with any other person and assessed to income-tax in any one of the 5 financial years preceding a prescribed date on an income of not less than Rs. 10,000 derived from commerce and industry; or (b) being a nominee of a firm under European management in the constituency and assessed to income-tax similarly; or (c) being nominated by a qualified company, i.e., under European control, not principally engaged in tea industry, having a place of business in the constituency, and has a paid-up capital of not less than a lakh of rupees and has in the constituency capital assets other than money to the value of at least Rs. 25,000.

For the Indian Commerce and Industry Constituency.—(a) Being an Indian carrying on business in the same manner as shown in Clause (a) above in the case of a European; or (b) being a nominee by a firm not

under European control or a Hindu joint family which firm or family carries on business in the constituency and similarly assessed to income-tax on an income derived from commerce and industry of not less than Rs. 10,000 ; or (c) being the owner of or nominated on behalf of a factory not under European control by the owner thereof, situated in the constituency and subject to the provisions of the Indian Factories Act, 1934 not being a tea factory ; or (d) being the nominee of a company incorporated under the Indian Companies Act, 1913, not under European control and not engaged principally in the tea industry with a paid-up capital, of not less than Rs. 50,000 registered in Assam and having its registered office at Assam or of not less than a lakh of rupees and has in the constituency capital assets not including money to the value of not less than Rs. 25,000.

NOTE :—A firm, joint Hindu family or a Company would be entitled to nominate three persons for inclusion in electoral roll and only one of them would be entitled to vote. The nominee in the case of a firm or a Hindu joint family should be a member thereof authorised to sign documents on behalf of them for at least 6 months in the ordinary course of business. In the case of a company only a director, managing agent, manager, secretary or a person authorised to sign documents in the ordinary course of business for at least 6 months would be entitled to be included in the electoral roll.

Labour constituencies.—The qualifications for being included in an electoral roll for a labour constituency are : (a) having worked as a permanent employee during the year ending on the prescribed date in one or

more qualifying tea gardens for not less than 180 days ; and (b) having lived either within the boundary of the garden or on land provided for that purpose by the owners thereof.

NOTE :—A person will not be qualified to be chosen to fill any of the seats unless he is a member of a qualifying tribe or caste as mentioned in the Assemblies Order and entitled to vote in the choice of a member for some seat in the province, or some seat in the Legislative Assembly, Bengal, or of Bihar or the Assembly of Orissa. [See Para 22, Part 9 of the Government of India (Provincial Legislative Assemblies), Order 1936].

The Assam Legislative Council

The franchise qualifications are :—

Having a place of residence in the constituency in which a person ordinarily resides or has his family dwelling place which he occasionally occupies. In the case of a European actual employment anywhere in Assam although absent on leave from his employment and persons having any one of the following qualifications :—

Property qualifications.—(a) Being assessed to income-tax in the previous financial year and had in the year in respect of which assessment was made a total income of not less than Rs. 3,000 ; or (b) being the owner of land assessed or assessable at not less than Rs. 500 per annum in the constituency ; or (c) being the holder of land in the constituency in respect of which local rates of not less than Rs. 50 per annum in the aggregate is payable.

Personal qualifications.—Personal qualifications are the same as in Bihar Legislative Council except that in the case of pensioners in Clause 5(b) the sum of not less than Rs. 100 is prescribed and for Clause 5(f) it should be read as :

“ The non-official Chairman of a Municipal Board or Small Town Committee constituted under the Assam Municipal Act, 1923 or of a Local Board constituted under the Assam Local Self Government Act, 1915 and for Clause 5(g) above.” The non-official Chairman of any Central Bank or Banking Union which is a registered society within the meaning of Sec. 2 of the Co-operative Societies Act, 1912 and which does not operate solely outside the province.

Additional qualifications prescribed for women.—The following women are additionally qualified to be included in the electoral roll of a territorial constituency : (1) Wives of persons assessed to income-tax in the previous financial year on an income of not less than Rs. 6,000 ; or (2) owners of land in the constituency assessed to land revenue of not less than Rs. 2,000 ; or (3) holders of land in the constituency liable to pay local rates thereon aggregating to not less than Rs. 100 per annum ; or (4) title holders and pensioners (as are mentioned in list of personal qualifications above).

Additional qualifications for Scheduled castes.—(1) Being assessed to income-tax during the previous financial years ; or (2) being the owner of land in the constituency assessed to or assessable to land revenue of not less than Rs. 150 per annum ; or (3) being liable to pay local rates amounting in the aggregate to not less

than Rs. 15 per annum in respect of land in the constituency.

Electors for the Bihar Legislative Assembly

General requirement as to residence.—In Bihar no person is entitled to be an elector of any territorial constituency unless he resides within that constituency.

What is residence ?—As to what is residence, it is specified in the 6th Schedule to the Government of India Act, which states that in the case of Bihar a person is said to reside within a constituency if he ordinarily lives therein or has his family dwelling therein which he occasionally occupies or maintains therein a dwelling house ready for occupation which he occasionally occupies.

Subject to the residential qualification, any of the following qualifications entitle a person in Bihar to be an elector for the Assembly :—

Qualifications dependent on taxation.—Being assessed during the previous financial year, to income-tax or to an aggregate amount of not less than Rs. 1-8-0 in respect of Municipal tax or in the case of a member of the Scheduled castes of an annual amount of not less than As. 6 or As. 12 within 3 years from the commencement of the provisions of the Government of India Act, referring to the Governor's Provinces.

Qualifications dependent on property.—(1) Being an occupier of land or buildings situate in the notified area of Jamshedpur in respect of which he is liable to pay as annual rent of not less than Rs. 24 ; or (2) being the holder of land in the province, not situated in the

notified area of Jamshedpur, or an area in which Municipal tax or Chaukidari tax is levied for which he is liable to pay a rent of not less than Rs. 6 per annum or a local cess of not less than As. 3 ; or *special provision as regards the Santhal Parganas* : In Santhal Parganas, being the holder of land for which he is liable to pay a rent of not less than Rs. 5 per annum or a local cess of not less than As. 8 within first 3 years of the formation of the Governor's Provinces.

Educational qualifications.—Having passed the Matriculation Examination or any examination which is prescribed to be equivalent thereto or any examination not lower than a Final Middle School Examination.

Qualification by reason of service in His Majesty's forces.—Being a retired, pensioned, or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

Additional qualifications for women.—(1) Being pensioned widows or pensioned mothers of persons who are officers or non-commissioned officers or soldiers of His Majesty's regular military forces ; or (2) Being the wives of persons, (a) assessed to income-tax in the previous financial year, or (b) wives of retired, pensioned or discharged officers, non-commissioned officers or soldiers of His Majesty's regular military forces, or (c) being assessed in the previous financial year to not less than Rs. 3 by way of Municipal tax, or (d) being assessed to not less than Rs. 2-8-0 Chaukidari tax in the province except in the Santal Parganas annually, or (e) being in occupation of land or a house in the notified area of Jamshedpur in respect of which there is a liability to pay rent of not less than Rs. 144 per annum,

or (f) being holders of land in the province (except in the notified area of Jamshedpur or an area in which Municipal tax or Chaukidari tax is levied, in respect of which he is liable to pay rent of not less than Rs. 24 per annum or a local cess of not less than As. 12; or (3) Being proved to be literate (but this literary qualification in the case of women is omitted within the first 3 years of the formation of the Governor's Provinces).

THE BIHAR LEGISLATIVE ASSEMBLY

The Indian Christian Constituency (1 seat).—Franchise qualifications are that a person should belong to an electoral college consisting of 40 persons by the Chota Nagpur Catholic Sabha and 40 persons nominated for the purpose of the election by the Bihar and Orissa Christian Council.

Backward tribes.—In order to entitle a member of the backward tribes to fill a seat reserved for them it is necessary that a person should be a member of the backward tribes and entitled to vote.

Scheduled castes.—Besides the other qualifications members of the Scheduled castes are entitled to be included in an electoral roll for a territorial constituency if in the previous financial year he is assessed in respect of municipal tax at an annual amount of not less than As. 6.

Commerce, Industry, Mining and Planting Constituencies (4 seats).—The qualifications are the same as in Bombay except that in the case of an individual firm or a Hindu joint family was in any one of the 5 financial years preceding a prescribed date assessed to income-

tax on an income of not less than Rs. 5,000 derived from commerce and industry ; in the case of a Corporation has a paid-up capital of not less than Rs. 50,000.

Landholders' constituency (4 seats).—For inclusion in an electoral roll for landholders constituency the qualifications are :—*Residence* in the constituency and (a) in the Patna, Tirhut and Bhagalpur divisions' landholders' constituencies the holding as proprietor or tenure holder land in the province for which a person is liable to pay not less than Rs. 4,000 land revenue or Rs. 1,000 by way of local cesses per annum ; or (b) in the Chota Nagpur Division landholders' constituency the holding as proprietor land in respect of which a person is liable to pay yearly land revenue on not less than Rs. 6,000 or local cesses amounting to not less than Rs. 500 or the holding as tenure holder land in the province in respect of which he is liable to pay annually not less than Rs. 750 of local cesses.

Labour constituencies (4 seats).—The franchise qualifications are :—

Residence in the province for not less than 6 months in the year ending on the prescribed date.

In the case of a Trade Union constituency.—(1) Membership, honorary membership or being an official of a constituent Trade Union but not employed wholly or mainly in a clerical supervisory, recruiting or administrative capacity, and (2) being not in arrears of subscription in the case of an ordinary member of a Union.

In the case of a non-Union Labour constituency.—That a person has worked for not less than 180 days:

(whether successive or not) in the year ending on the prescribed date at not more than Rs. 300 per month at one or more qualifying factories or mines.

The University constituency (1 seat).—The franchise qualifications are :—Having a place of residence in India and (1) Being a member of the Senate or of the syndicate of the Patna University ; or (2) Being a graduate of 7 years standing of that University and registered as such in the University register throughout the 2 years immediately preceding the prescribed date.

Electors for the Bihar Legislative Council

The following qualifications entitle a person to be included in an electoral roll of any constituency for the Bihar Legislative Council :—(1) Residence in the constituency, i.e., by ordinarily living therein or having his family dwelling therein which he occasionally occupies or maintains therein a dwelling house ready for occupation which he occasionally occupies and (2) Being assessed to income-tax during the previous financial year on a total income of not less than Rs. 7,500.

Property qualifications.—Being the holder of land (in the case of Muhammadan constituency) for which he is liable to pay not less than Rs. 375 per annum or local cess amounting in aggregate to not less than Rs. 62-8-0 per annum ; or being the holder of land in the case of any other constituency for which he is liable to pay not less than Rs. 600 per annum or local cess amounting in the aggregate to not less than Rs. 100 per annum.

Personal qualifications.—(a) Being the holder of any title, order or decoration conferred by or on behalf

of His Majesty not lower than Diwan Bahadur, Sardar Bahadur, Khan Bahadur, Rai Bahadur or Rao Bahadur ; or (b) Being a pensioner, civil, military or political of not less than Rs. 150 per month ; or (c) Being in British India a non-official member of any legislature or a member of an executive council or a minister or a Chancellor, Pro-Chancellor, Vice-Chancellor, Fellow or Honorary Fellow of or a member of the Senate or Court of any University constituted by Law ; or (d) Being in British India a Judge of the Federal Court or any High Court, Chief Court or Judicial Commissioner's Court ; or (e) The Mayor or Sheriff of Madras, Calcutta or Bombay ; or (f) The non-official Chairman or Vice-Chairman, President or Vice-President of a municipality notified area or the Patna Administration Committee, District Board or Local Board, District Committee or Cantonment Board in the province ; or (g) The non-official Chairman or Vice-Chairman of any Central Bank or Banking Union which is a registered society within the meaning of Sec. 2 of the Bihar and Orissa Co-operative Societies' Act, 1935, and does not operate outside the province ; or (h) A headman styled tarafdar in the District of Manbhum or the District of Singhbhum or a headman styled Parganait or Manki being member of a backward tribe in the Districts of Ranchi, Singbhum or Santal Parganas.

Additional qualifications for Women.—If they are the wives of ; (a) persons assessed to income-tax in the previous financial year and had in the year in which assessment was made a total income of not less than Rs. 20,000, (b) holders of land assessed at Rs. 1,200 land revenue or local cess of not less than Rs. 200 per annum in the case of a Muhammadan constituency and

assessed at Rs. 2,000 land revenue or local cess of not less than Rs. 400 per annum in the case of any other constituency and (c) title holders and persons mentioned in (a) and (b) of personal qualifications above.

Additional qualification for Scheduled castes is to be elected at Primary Election held for electing candidate for Provincial Assembly.

Electors for the U. P. Legislative Assembly

Residential qualification.—In order to get qualified for being an elector for the U. P. Legislative Assembly it is necessary that a person should be a resident in the constituency. *Residence* according to the 6th Schedule to the Government of India Act referring to the United Provinces, means that he should ordinarily live in that area or maintain a dwelling house therein ready for occupation in which he occasionally dwells.

Besides the residential qualification an elector to the U. P. Legislative Assembly is required to possess any one of the following :—

Qualifications depending on taxation.—(1) Being assessed to income-tax during the previous financial year; or (2) Being assessed to Municipal tax on an income of not less than Rs. 150 per annum in any constituency.

Qualifications dependent on property.—(1) Being the owner or tenant of a house or building in the constituency the rental value whereof is not less than Rs. 24 per annum or in the case of a member of the Scheduled castes the rental value whereof is not less than Rs. 12 per annum; or (2) Being the owner of land in

the constituency on which land revenue of not less than Rs. 5 per annum is payable ; or (3) Being the owner of land in the constituency free of land revenue if the land revenue nominally assessed amounts to not less than Rs. 5 per annum ; or (4) Being a tenant of land in the constituency in respect of which rent of not less than Rs. 10 per annum or rent in kind equivalent thereto is payable ; or (5) Being an under proprietor in Oudh of land in the constituency in respect of which under proprietary rent of not less than Rs. 5 per annum is payable ; or (6) Being in the case of a constituency comprising any part of the Hill Pattis of Kumaun is a resident in those Hill Pattis and owner of a fee simple estate in those Hill Pattis or is assessed to the payment of land revenue or cesses of any amount in those Hill Pattis or is a Khaikar.

Educational Qualification.—Having passed the Upper Primary examination or an examination prescribed as equivalent thereto.

Qualification by reason of service in His Majesty's forces.—Being a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces.

Provision as to Shilpkars in the Hill Pattis of Kumaun.—Being a Shilpkar resident in a village in the Hill Pattis of Kumaun and is selected and designated as their representative by the Shilpkar families of that village.

Additional qualifications for women.—Electors for the Assembly : Besides the above, women are additionally qualified to be electors to the Assembly by possess-

ing any of the following qualifications:—(1) Being the pensioned widow or pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular forces; or (2) Being proved to be literate; or (3) if her husband possesses any of the following qualifications: (a) Being the owner or tenant of a house or building in the constituency the rental value whereof is not less than Rs. 36 per annum; or (b) Being assessed to income-tax on an income of not less than Rs. 200 per annum in the previous year in the constituency in which no house or building tax is in force; or (c) *Being the owner of land in the constituency in respect of which land revenue amounting to not less than Rs. 25 per annum is payable*; or (d) *Being the owner of land in the constituency free of land revenue if the land revenue nominally assessed amounts to not less than Rs. 25 per annum*; or (e) Being a resident of Hill Pattis of Kumaun either owning a fee simple estate or is assessed to the payment of land revenue or cesses as mentioned above; or (f) Being a permanent tenure holder or a fixed rate tenant as defined in the Agra Tenancy Act, 1926, or an under proprietor or occupancy tenant as defined in the Oudh Rent Act, 1886 and is liable as such to rent of not less than Rs. 25 per annum; or (g) Being the holder as a tenant of land in respect of which a rent of not less than Rs. 50 per annum or a rent in kind equivalent to not less than Rs. 50 is payable; or (h) Being assessed in the previous financial year to income-tax; or (i) Being a retired, pensioned, or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

*Commerce and Industry constituencies (3 seats).—*The franchise qualifications are the same as for Bengal and Bombay Legislative Assemblies.

*Landholders' constituency (6 seats).—*The franchise qualifications are: (1) *In the case of the British Indian Association of Oudh constituency*, residence in the province and membership of that association. (2) *In the case of the Agra Province Zamindars' Association*, residence in the province, membership of the association and assessment to the payment of land revenue in respect of land in the province of an amount of not less than Rs. 5,000.

Labour constituencies (3 seats).—(1) *In the case of Trade Union constituency.* (a) Residence in the province for a period not less than 6 months in the year ending on the prescribed date and (b) Membership or honorary membership or being an official for at least 12 months of a constituent Trade Union certified by Governor existing for at least 2 years and registered for at least one year¹ (but not employed wholly or mainly in a clerical, supervisory, recruiting or administrative capacity, and in the case of an ordinary member not in arrear with his subscription thereto). (2) *In the case of non-Union Labour constituencies.* (a) Residence in the province for a period not less than 6 months in the year ending on the prescribed date and (b) Having worked on not less than 180 days whether successive or not in the year ending on the prescribed date at a rate not greater than Rs. 300 per month at one or more qualifying factories.

University Constituency.—The franchise qualifications are that a person should have a place of residence

in India and is either, (1) a member of the court, executive council or academic council of the Allahabad or the Lucknow University or of the Senate, Executive Council or Academic Board of the Agra University ; or (2) a graduate of one of those Universities of 7 years' standing and registered as such in the University register throughout the 2 years immediately preceding the prescribed date.

Electors for the United Provinces Legislative Council

In order to entitle a person to be an elector for the U. P. Legislative Council, it is necessary that he should possess the following qualifications, *i.e.*, to say :—

Residential qualification.—A person in order to be qualified to be an elector for the Legislative Council should be a resident in the constituency in the same way as for the Legislative Assembly.

Besides the Residential Qualification any of the following entitle a person to be an elector.

Qualification dependent on taxation.—Assessment to income-tax in the previous financial year on a total income of not less than Rs. 4,000.

Qualifications dependent on property.—(1) Ownership of land in the constituency on which land revenue of not less than Rs. 1,000 per annum is payable or Rs. 100 in the case of residents in Hill Patis of Kumaun ; or (2) Ownership of land in the constituency free of land revenue if the land revenue nominally assessed on the land for determining the amount of rates payable in respect of the land either alone or together with any land revenue payable by him as owner of other land

in the constituency amounts to not less than Rs. 1,000 per annum or Rs. 100 in the case of residents in Hill Pattis of Kumaun holding land therein ; or (3) Tenancy of land in the constituency in respect of which rent in cash or kind of not less than Rs. 1,500 per annum is payable or the sum of Rs. 100 in the case of residents of Hill Pattis of Kumaun holding land therein ; or (4) Being an under proprietor of land in Oudh in respect of which under proprietary rent of not less than Rs. 1,000 per annum is payable.

Personal qualifications.—(1) Being the holder of any title, order or decoration conferred by the Government not lower than Diwan Bahadur, Sardar Bahadur, Khan Bahadur, Rai Bahadur or Rao Bahadur ; or (2) Being a civil, military or political pensioner of not less than Rs. 250 per month ; or (3) (i) Being a non-official member of any legislature in British India or (ii) a member of an Executive Council or a Minister in British India ; or (iii) a Chancellor, Pro-Chancellor, Vice-Chancellor, Pro-Vice-Chancellor, Fellow or Honorary Fellow of, or a member of the Senate or Court of any University in British India ; or (iv) being a Judge of the Federal Court or any High Court, Chief Court or Judicial Commissioner's Court in British India ; or (v) the Mayor or Sheriff of Madras, Calcutta or Bombay ; or (vi) being the non-official Chairman of a District Board constituted under the U. P. District Boards Act, 1922, or of a Municipal Board under the U. P. Municipalities' Act, 1916 ; or (vii) the non-official president of any central co-operative society within the meaning of Section 2 of the Co-operative Societies Act not operating outside the province.

Additional qualifications for women electors.—

Besides the above women are entitled to be electors if they possess any of the following qualifications :—(1) Being the wife of a person assessed to income-tax in previous financial year on an income of not less than Rs. 10,000 ; or (2) Being the wife of a person owning land in the constituency in respect of which land revenue amounting to not less than Rs. 5,000 per annum is payable ; or (3) Being the wife of a person owning land in the constituency free of land revenue if the land revenue nominally assessed amounts to not less than Rs. 5,000 per annum ; or (4) Being the wife of a person holding title, order or decoration conferred by or on behalf of His Majesty not being lower than Diwan Bahadur, Sardar Bahadur, Khan Bahadur, Rai Bahadur or Rao Bahadur ; or (5) Being the wife of a Civil, Military or Political pensioner drawing not less than Rs. 250 per month.

Special qualifications for Scheduled caste electors.—

A member of the Scheduled castes is entitled to be an elector if he possesses any of the following qualifications :—(1) Being assessed to income-tax on an income of not less than Rs. 2,000 ; or (2) Being owner of land in the constituency in which land revenue of not less than Rs. 200 per annum is payable ; or (3) Being the owner of land in the constituency free of land revenue if the land revenue nominally assessed on the land for determining the rates payable in respect of the land either along or together with any land revenue payable in respect of any other land in the constituency amounts to not less than Rs. 200 per annum ; or (4) Being a tenant of land in the constituency in respect of which rent in cash or in kind of not less than Rs. 500 per

annum is payable ; or (5) Being an under proprietor in Oudh of land in the constituency in respect of which rent of not less than Rs. 200 per annum is payable ; or (6) Being a holder of a title conferred on him by the Governor-General of India.

Electors for the Sind Legislative Assembly

The following qualifications entitle a person to be an elector for the Sind Legislative Assembly :—

General requirements as to residence.—In order to entitle a person to be an elector for the Legislative Assembly of Sind it is necessary that he should satisfy the requirements of residence.

NOTE.—*Residence in relation to urban constituency*, means residence for a period of not less than 180 days in the previous financial year in a house in the constituency or within 2 miles of the boundary thereof.

In the case of a rural constituency the requirement of residence will be satisfied if a person has for a period of not less than 180 days in the previous financial year resided in a house in the constituency or in a contiguous constituency of the same communal description.

Residential qualification in relation to European Territorial Constituency.—In the case of a European territorial constituency in Sind, residence will be understood to mean residence in a house in the province in the previous financial year for not less than 180 days.

What is residence in house ?—The user of a house sometimes as a sleeping place, if a person is at liberty

to return to it although he is absent from it or has another dwelling in which he resides.

Subject to the residential qualification, any one of the following qualifications entitle a person to be an elector for the Sind Legislative Assembly :—

Qualifications dependent on taxation.—Assessment to income-tax during the previous financial year.

Qualifications dependent on property.—(1) Occupation in one's own right or as permanent tenant or as lessee from Government, alienated or un-alienated land on which an assessment of not less than Rs. 8 land revenue has been paid or would have been paid if the land had not been alienated in any one of the preceding 5 revenue years; or (2) Cultivation as a Hari alienated or unalienated land on which an assessment of not less than Rs. 16 land revenue has been leviable in the revenue year preceding and if land is cultivated by more than one Hari only one Hari for every Rs. 16 of land revenue in respect of that land; or (3) Being the alienee of the right of the Government to the payment of rent or land revenue amounting to not less than Rs. 8 in respect of alienated land in the constituency; or (4) Being in occupation as owner or tenant in the constituency a house or building situate in Karachi City or in any Municipal borough, Municipal District, cantonment or notified area and having at least the appropriate value.

NOTE.—Appropriate value in the case of a house or building situate, (i) *in Karachi City* means an annual rental value of Rs. 30 and (ii) *outside Karachi* but in an area in which a tax is based on the annual

rental value of houses or buildings an annual rental value of Rs. 18, (iii) in relation to any other house or building, capital value of Rs. 750.

Qualification dependent on education.—Having passed the Matriculation Examination or School Leaving examination of the University of Bombay or any examination prescribed as at least equivalent or any other prescribed examination not lower than a vernacular examination.

Qualification dependent on service in His Majesty's forces.—Being a retired, pensioned or discharged officer, non-commissioned officer or soldier of H. M.'s regular military forces.

Additional qualifications for women.—Besides the above any of the following additional qualifications entitle women to be electors for the Sind Legislative Assembly: (1) Being a pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of H.M.'s military forces; or (2) Being a woman proved to be literate; or (3) Being a woman whose husband possesses any of the following qualifications, viz., (i) was assessed to income-tax during the previous financial year; or (ii) is a retired, pensioned, or discharged officer, non-commissioned officer or soldier of H. M.'s regular military forces; or (iii) holds in his own right or occupies as a permanent tenant or as a lessee from the Government alienated or unalienated land in the constituency on which in any one of the 5 revenue years preceding that in which the prescribed date falls, an assessment of land revenue amounting in the Upper Sind Frontier District to not less than Rs. 16 and elsewhere to not less than Rs. 32

has been paid or would have been paid if the land had not been alienated; or (iv) is the alienee of the right of the Government to the payment of rent or land revenue in respect of alienated land in the constituency amounting in the Upper Sind Frontier District to not less than Rs. 16 and elsewhere to not less than Rs. 32; or (v) occupies as owner or tenant a house or building situate in the city of Karachi or in a Municipal borough, Municipal District, cantonment or notified area and having at least appropriate value.

NOTE.—Appropriate value means in relation to a house or building within the city of Karachi an annual rental value of Rs. 60, in relation to a house or building situate in any other area in which any tax is based on the annual rental value of houses or buildings an annual rental value of Rs. 36 and in relation to any other house or building a capital value of Rs. 1,500.

THE SIND LEGISLATIVE ASSEMBLY

Women's reserved seats.—Special provision as to residence.

Besides the provisions as to residence applicable, women in Sind are qualified to be included in an electoral roll for a constituency specially formed for the election of a person to fill the seats reserved for women unless she has resided for not less than 180 days in a house in the constituency.

Muhammadan women's special representation.—No man will be included in the electoral roll for or to vote in the Muhammadan constituency specially formed for the election of persons to fill the seat reserved for Muhammadan women.

*Commerce and Industry constituencies (2 seats).—*The franchise qualifications in these constituencies are ; (a) being a subscribing member of certain constituent bodies, viz., the Karachi Chamber of Commerce and the Karachi Indian Merchants' Association and the Karachi Buyers and Shippers' Chamber shown as such in the list of members and has paid all subscriptions accrued due before the end of the previous financial year ; and or (b) being a nominee in that behalf of a firm, Hindu joint family or corporation which is a qualified member thereof.

NOTE.—In both the above cases a member will be a qualified member if he is a subscribing member who paid all subscriptions accrued due before the end of the previous financial year ; and (b) engaged in commerce or industry and has a place of business in the province ; and (c) in the case of an individual a firm or a Hindu joint family was in any one of the 5 years preceding a prescribed date assessed to income-tax on an income of not less than Rs. 10,000 ; and (d) in the case of a corporation has a paid up capital of not less than a lakh of rupees.

NOTE.—Firms, corporations or Hindu joint families will be entitled to nominate not more than 3 persons for being inserted in the electoral roll as being the nominees of the firm, corporation or family in question, but not more than one of the said persons will be entitled to vote at any election.

The qualifications for being nominees of a *firm*, *Hindu joint family* or of a *corporation* are the same as in the case of the Orissa Legislative Assembly. (See

N. B. to the note on Commerce and Industry constituencies, Orissa.)

Landholders' constituencies.—The franchise qualifications in the case of the Landholders' constituency are: (a) *residence* for a period of not less than 180 days in a house in the province; or (b) being a Jagirdar of the first or second class in the province; or (c) having in each of the 3 revenue years preceding that in which the prescribed date falls paid land revenue amounting to not less than Rs. 1,000 in respect of land in the province.

Labour constituency (1 seat).—The franchise qualifications are:—(a) residence in the province for not less than 6 months in the year ending on the prescribed date; or (b) membership, honorary membership or being an official of a recognised Trade Union certified by the Governor for 12 months at least the said Trade Union admitting to its membership persons employed at factories in the towns specified in the Legislative Assemblies' Order (but not employed wholly or mainly in a clerical, supervisory, recruiting or administrative capacity); or (c) having for not less than 180 days worked for remuneration at a rate not greater than Rs. 300 per month at one or more factories in the towns specified (whether successively or not).

Electors for the N.-W. F. P. Assembly

The following qualifications entitle a person to be an elector for the North-West Frontier Province Legislative Assembly:—

Residential qualification.—No person will be qualified to be included in the electoral roll for any terri-

torial constituency unless he is resident in the constituency.

What is residence?—For the above purpose proof that a person or in the case of a woman her husband owns a family dwelling house or a share in a family dwelling house in a constituency, and that the house has not been during the 12 months preceding the prescribed date been let on rent either in whole or in part would be sufficient.

Subject to the above, the following are the qualifications by possessing any of which a person is entitled to be an elector for the N.-W. F. P. Legislative Assembly.

Qualifications dependent on taxation, during the previous financial year.—(1) Being assessed to income-tax; or (2) Being assessed to municipal or cantonment tax of not less than Rs. 50 in the province; or (3) Being assessment to District Board tax of not less than Rs. 2 in a rural constituency.

Qualifications, dependent on rights in property.—Being the owner throughout 12 months preceding the prescribed date of immovable property of the value of not less than Rs. 600 not being land assessed to land revenue; or being the occupier for 12 months preceding the prescribed date as a tenant of immovable property of the annual rental value of not less than Rs. 48 not being land assessed to land revenue; or being the owner of not less than 6 acres irrigated land or not less than 12 acres unirrigated land or land assessed to not less than Rs. 5 per annum of land revenue; or being the holder by assignment of land revenue amounting to not.

less than Rs. 10 per annum; or being a tenant throughout the preceding fasli year of not less than 6 acres of irrigated land or not less than 12 acres of un-irrigated land; or being an inamdar or lambardar or a Zaildar.

Educational qualification.—Having passed a Middle School Examination or any other examination equal thereto in the case of an urban constituency or having passed the Primary 4th class examination or any other equal examination in the case of a rural constituency.

Qualification by reason of service in H.M.'s forces.—Being a retired, pensioned or discharged officer, non-commissioned officer or soldier of H.M.'s regular military forces.

Women additionally qualified to be electors.—The following women are additionally qualified to be electors for the Sind Legislative Assembly:—(1) A pensioned widow, or the pensioned mother of a person who was an officer, non-commissioned officer, or soldier of H.M.'s regular forces; or (2) A woman who is proved to be literate; or (Note:—But this qualification is not available within 3 years from the commencement of the provisions relating to the formation of Governor's Province); (3) Where a woman's husband possesses any of the following qualifications:—(a) being a retired, pensioned, or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces; or (b) being a person having an income of at least Rs. 40 per month; or (c) being a person assessed to income-tax during the previous financial year; or (d) being a person who was assessed in an urban constituency to a Municipal or cantonment tax of an amount not less

than Rs. 50 ; or (e) being a person who in a rural constituency was assessed, in respect of any cess rate or tax to an amount of not less than Rs. 4 per annum payable to the District Board ; or (f) being a person who throughout the 12 months preceding the prescribed date owned immovable property in the province of the value of not less than Rs. 600 not being land assessed to land revenue ; or (g) being a person who occupied as a tenant throughout the 12 months preceding the prescribed date immovable property in the province of an annual rental value of not less than Rs. 48 not being land assessed to land revenue ; or (h) being a person who is the owner of land in the province assessed to land revenue of not less than Rs. 10 per annum ; or (i) being a person who is an assignee of land revenue in the province amounting to not less than Rs. 20 per annum ; or (j) being a person who is a tenant or lessee under the terms of a written lease for not less than 3 years of land in the province assessed to land revenue of not less than Rs. 10 per annum ; or (k) being a person who is a tenant with a right of occupancy (as defined in Chapter II of the Punjab Tenancy Act, 1887) in respect of land in the province assessed to land revenue of not less than Rs. 10 per annum.

Landholders' constituency.—The franchise qualifications are :—(a) being a resident¹ in the constituency and (b) being owner of land in the constituency assess-

¹ To prove residence it is enough to show that a person or in the case of a woman her husband owns a family dwelling house or a share therein in an area and that that house has not been let out in rent in whole or part during the 12 months preceding the prescribed date.

ed to land revenue at not less than Rs. 250 per annum ; or (c) being the assignee of land revenue in the province amounting to not less than Rs. 250 per annum ; or (d) being the recipient of la muajib, inam barat or pension sanctioned by orders passed in settlement operations amounting to not less than Rs. 250 per annum ; or (e) being the owner in the case of the Peshawar landholders' constituency of not less than 200 acres of irrigated land or 400 acres of unirrigated land.

Electors for the C. P. and Berar Legislative Assembly

The Central Provinces and Berar electoral roll.—The following qualifications entitle a person to be an elector for the C. P. and Berar Legislative Assembly.

Residential qualification.—An elector for the C. P. and Berar Legislative Assembly should necessarily satisfy the requirement as to residence.

NOTE.—No person will be qualified to be an elector in a Rural territorial constituency unless he has a place of residence therein ; similarly unless a person has a place of residence in or within 2 miles from the boundary of the constituency he will not be qualified to be an elector in an Urban constituency.

A person will be deemed to have a place of residence in a constituency if he had lived for not less than 180 days within the previous financial year in a house within the area ; or (b) has maintained for not less than 180 days a house within the area as a dwelling for himself in charge of his dependents or servants and has visited that house during that year.

Subject to the above qualification as to residence the others are :—

Qualifications dependent upon taxation.—(a) Being in the previous financial year was assessed to income-tax; (b) Being assessed to Municipal tax based on haisiyat in a Urban area of not less than Rs. 75.

Qualifications dependent on property.—Being the holder in the Central Provinces as a proprietor or the kadamdar of an estate or mahal the land revenue or kamil jama of which is not less than Rs. 2; or being the holder in the C. P. as a proprietor or the kadamdar in proprietary right sir land or Khudkash or as a malik Makbuza raiyat or tenant agricultural land being sir land Khudkasht or agricultural land the assessed or assessable land revenue or the rent of which is not less than Rs. 2; or being the holder in Berar in other than tenancy right agricultural land of which the assessed or assessable land revenue is not less than Rs. 2; or being the owner or tenant of a building the annual rental value of which is not less than Rs. 6 in an urban area; or being a Watandar, patel patwari holding office or a registered deshmukh or deshpandia or a lambardar.

Educational qualification.—Having in the case of a person in Nagpur passed an examination which qualifies for admission to a course of study for the Nagpur University or an examination prescribed as equivalent thereto or any other examination not lower than final middle school examination if it is so prescribed; or in the case of a subject of Berar having passed any examination in the Hyderabad State prescribed as qualifying a person to be an elector.

Qualification by reason of service in H. M.'s forces or in the forces of H. E. H. the Nizam of Hyderabad.—Being a retired, pensioned or discharged officer, non-commissioned officer or soldier of H. M.'s regular military forces or of the Regular forces of H. E. H. the Nizam of Hyderabad; or being a retired, pensioned or discharged officer or man of the Hyderabad State Police for any territorial constituency.

Additional qualifications for women.—Besides the above persons, the following additional qualifications entitle women to be electors for C. P. and Berar Legislative Assembly:—(1) Being the pensioned widow or pensioned mother of a person who was an officer, non-commissioned officer, or soldier of H. M.'s regular military forces; or (2) Being proved to be literate as prescribed, or holds a Primary school certificate; or (3) Being the wife of a person possessing the following qualifications:—

Husband's qualifications entitling a woman to be included in an electoral roll.—(1) Being a retired pensioned or discharged officer or non-commissioned officer or soldier of H.M.'s regular military forces; or (2) Being a holder as proprietor or the kadam of an estate or mahal the land revenue or kamil jama of which is not less than Rs. 35; or (3) Being a holder in C. P. of land the assessed or assessable land revenue or rent of which is not less than Rs. 35; or as a proprietor or the kadam in proprietary right of sir land or Khudkasht, or as a Malikmakbuza raiyat or tenant of agricultural land being sir land, khudkasht or agricultural land; or (4) Being the holder in Berar in other than in tenancy right of agricultural land the assessed or assessable land reve-

nue of which is not less than Rs. 35 ; or (5) Being the owner or tenant in a house in urban area the annual rental value of which is not less than Rs. 36 ; or (6) Being an assessee in an urban area in which Municipal tax based on haisiyat is imposed in the previous financial year to such a tax based on haisiyat of not less than Rs. 400 ; or (7) Being a retired, pensioned or discharged officer, non-commissioned officer or soldier of the regular forces of H. E. H. the Nizam of Hyderabad, or a retired, pensioned or discharged officer or man of Hyderabad State Police.

Additional Qualifications for Scheduled castes.—A Kotwar, a Jaglia or a village mahar holding office will also be qualified to be included in the electoral roll of any territorial constituency.

Backward Tribes constituency.—The franchise qualifications are :—Being a member of a backward tribe and having a place of residence in the constituency, i.e., (i) either that he actually dwelt in a house within the area for not less than 180 days in the aggregate during the previous financial year ; or (ii) has maintained a house within the area for not less than 180 days in the aggregate as a dwelling for himself in charge of his dependents or servants or has visited that house for that year.

The qualifications in the case of the backward tribes are those which are by the 6th Schedule, part 8 of the Government of India Act specified as the qualifications for inclusion in the electoral rolls for rural constituencies.

Commerce and Industry constituencies (2 seats).—The franchise qualifications are, that either an indivi-

dual should be qualified as shown below or a firm, Hindu joint family or a corporation which nominates him should be qualified as shown below: (a) Engagement in business and having a place of business in the constituency: and (b) Being assessed in the case of an individual, a firm or a Hindu joint family in any of the 5 years preceding the prescribed date on an income derived from commerce or industry of not less than Rs. 10,000: and (c) in the case of a corporation has a paid up capital of not less than Rs. 50,000.

The rest of the qualifications and conditions of franchise are the same as those in Bombay.

Landholders' constituencies (3 seats).—The franchise qualifications are as follows:—Having a place of residence in the constituency and in the *Northern and Southern Landholders' constituencies*: (a) Holding of a hereditary title recognised by the Government of India and the holding of land in the constituency in proprietary right; or (b) Being the owner of an estate in the constituency; or (c) Holding in proprietary right land in the constituency of which the assessed or assessable land revenue or kamil-jama is not less than Rs. 3,000 per annum.

In the Berar Landholders' constituency.—(a) Holding of a hereditary right recognised by the Government of India and the holding of agricultural land in the constituency in other than tenancy right; or (b) Being a Jagirdar, Palampatdar, Izardar, Inamdar, registered Deshmukh or Deshpandia holding land in the constituency in other than tenancy right the assessed or the assessable land revenue of which is not less than Rs. 500

per annum; (c) Holding land in the constituency in other than tenancy right the assessable or the assessed land revenue of which is not less than Rs. 1,000 per annum.

*In the case of Labour constituencies (2 seats).—*The franchise qualifications are, *residence* within the province for not less than 6 months ending on the prescribed date and *in the case of a Trade Union constituency*, (a) Being a member, honorary member or official, of a constituent Trade Union certified by the Governor to be a Trade Union operating in the Nagpur Municipality (but not employed wholly or mainly in a clerical, supervisory, recruiting or administrative capacity) for at least 12 months; and (b) Being not in the case of an ordinary member of the Union in arrears of subscription; and (c) Having lived in the Nagpur Municipality for at least 6 months during the year ending the prescribed date.

Non-union labour constituency.—(a) That a person has worked for not less than 180 days (whether successive or not) in the year ending on the prescribed date at a rate not greater than Rs. 300 per month at one or more qualifying factories.

In the case of the University constituency (1 seat). The franchise qualifications are, having a place of residence in India; and (a) Being a member of the Court of the Nagpur University; or (b) Having been for at least 7 years a graduate of the Nagpur University and registered as such in the University register throughout the 2 years preceding the prescribed date.

Electors for the Orissa Legislative Assembly

General requirements as to residence.—In order to entitle a person to be an elector for the Orissa Legislative Assembly it is necessary that he is a resident in the constituency.

NOTE.—By residence is meant that a person should ordinarily live in a constituency or have his family dwelling therein which he occasionally occupies or maintains therein a dwelling house ready for occupation which he occasionally occupies.

The following qualifications entitle a person to be an elector for the Legislative Assembly of Orissa:—

(1) Being assessed in the previous financial year to income-tax or to Municipal tax of not less than one rupee in the aggregate; or (2) Being a passed matriculate of any prescribed University or having passed an examination equal thereto or any other examination not lower than a Final Middle School Examination; or (3) Being a retired, pensioned, or discharged officer, non-commissioned officer or soldier of H. M.'s regular military forces.

Special qualifications for women electors.—Besides the above women in Orissa are also entitled to be electors for the Orissa Legislative Assembly if they possess any of the following qualifications: (1) Being a pensioned widow or pensioned mother of a person who was an officer, non-commissioned officer, or soldier of H. M.'s regular military forces; or (2) A woman's husband being a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of H. M.'s regular military forces; or (3) A woman's husband being in the

previous financial year assessed to income-tax or to an aggregate sum of not less than Rs. 3 in respect of Municipal taxes; or (4) Being a woman proved to be literate.

The qualification of literacy in the case of women will not be available within the first three years from the formation of the province.

Electors for the Orissa Legislative Assembly from the Districts of Cuttack, Puri, Balasore and the sub-division of Angul.—The following qualifications for the electors of the above districts are additionally prescribed:—(1) Being assessed to Chaukidari tax of an annual amount of not less than As. 9 or As. 12 within 3 years of the commencement of the provincial electorates; or (2) Being the holder of land outside a Municipality or an area in which Chaukidari tax is levied for which he is liable to pay rent or land revenue of not less than Rs. 2 per annum or a local cess of not less than one anna.

Additional qualifications for women voters from the above districts.—The following women are additionally qualified for being electors for the Legislative Assembly:—(1) Wives of persons assessed to Chaukidari tax of an annual amount of not less than Rs. 2-8-0; or (2) Wives of persons holding land (not situated in a Municipality or in an area in which Chaukidari tax is levied) for which he is liable to pay rent or land revenue of not less than Rs. 16 per annum or local cess of not less than As. 8.

Special Qualifications for electors from Ganjam, Vizagapatam and Khondmals sub-division.—(1) The holding in those districts or in that sub-division land not

situate in a Municipality in respect of which, the elector is liable to pay rent or land revenue of not less than Rs. 2 per annum; or (2) In the case of a woman, if she is the wife of a person holding land either in those districts or in that sub-division, not situate in a Municipality in respect of which he is liable to pay rent or land revenue of not less than Rs. 16 per annum.

Additional qualifications for electors in the District of Sambalpur.—(1) The holding of land situated in a Municipality or in a sanitation area for which he is liable to pay rent or land revenue of not less than Re. 1 per annum or village cess of not less than one anna or Rs. 2 or As. 2, respectively, if within 3 years of the formation of the provincial legislature; or (2) Occupation of a house for which he is liable to pay annual rent of not less than Rs. 6 the house not being in a Municipality or Sanitation area; or (3) Being assessed to an annual tax of at least As. 12 under the Central Provinces Sanitation Act, 1902, or the Central Provinces Village Sanitation and Public Management Act, 1902; or (4) Being a village servant holding office as a Jhankar, Ganda, Kotwar, Jagalia or Mahar and holds land recorded in the record of rights as service land.

Additional qualifications for women electors in the District of Sambalpur.—A woman in the District of Sambalpur is additionally qualified: (1) If she is the wife of a holder of land not situated in a Municipality or a sanitation area for which he is liable to pay rent or land revenue of not less than Rs. 16 per annum or village cess of not less than As 8; or (2) If she is the wife of the occupant of a house not situate in a sanitation or in a Municipality area for which he is liable to

pay an annual rent of not less than Rs. 30 ; or (3) If she is the wife of a person who is assessed to an annual tax of not less than Rs. 10 under the Central Provinces Sanitation Act, 1902 or the Central Provinces Village Sanitation and Public Management Act, 1920.

The Orissa Legislative Assembly

Backward Tribes' representation.—In respect of the *Sambalpur Sadr general constituency* a person is entitled to fill the seat reserved for a representative of backward tribes if he is a member of the backward tribes entitled to vote in the choice of a member to fill that seat.

For filling 4 reserved seats for Backward tribes.—These seats will be filled by the Governor in his discretion.

Scheduled castes' qualifications.—Besides the other general qualifications, *in the Districts of Cuttack, Puri and Balasore and the sub-division of Angul*, being assessed to *Chaukidari* tax of an annual amount of not less than As. 6 and in the districts of *Ganjam, Vizagapatam and the Khondmals sub-division* besides the other qualifications mentioned a member of the Scheduled castes would be entitled to be included in an electoral roll if he is a village servant whether hereditary or not.

Commerce and Industry constituencies (1 seat).—The franchise qualifications in these constituencies are : *that a person or the nominee of a firm, Hindu joint family or a corporation* (1) is engaged in commerce or industry and has a place of business in the province ; and (2) is assessed to income-tax in any one of the 5 financial years immediately preceding that in which the

prescribed date falls on an income of not less than Rs. 5,000 derived from commerce or industry ; and (3) in the case of a corporation has a paid up capital of not less than Rs. 50,000.

NOTE.—Firms, corporations or Hindu joint families will be entitled to nominate not more than 3 deputies each. The names of these deputies may be enrolled as being their nominees, but only one of the 3 will be entitled to vote.

Qualifications for nominees of a firm or a Hindu joint family are that a person should be a member thereof or a person who is and has for at least 6 months been authorised to sign documents in its name in the ordinary course of its business.

Qualifications for nominees of a corporation are : Being a Director, Managing Agent or Manager thereof or the Secretary or a person who is and has for at least 6 months been authorised to sign documents in its name in the ordinary course of business.

Landholders' constituencies (2 seats).—The franchise qualifications besides the residential one in the constituency are : (a) the holding as proprietor land in the provinces for which a person is liable to pay land revenue amounting to not less than Rs. 3,000 per annum ; or (b) the holding as proprietor, tenure holder or sub-proprietor land in the province for which he is liable to pay local, land or village cess amounting to not less than Rs. 500 per annum ; or (c) being the proprietor of an estate in the province which is by custom impartible and descends in accordance with the law of primogeniture.

Labour constituency (1 seat).—The franchise qualifications are residence in the province for not less than 6 months ending on the prescribed date ; and (a) Being a member, honorary member or official of a recognised Trade Union certified by the Governor and operating in the province (but not employed wholly or mainly in a clerical supervisory recruiting or administrative capacity) for at least 12 months ; or (b) Having worked for remuneration at a rate not greater than Rs. 300 per month on not less than 180 days in the year whether successive or not at one or more factories or mines in the province.

Electors for the Punjab Legislative Assembly

The following qualifications entitle persons to be electors for the Punjab Legislative Assembly :—

Residential qualification.—No person is entitled to be an elector for the Punjab Legislative Assembly unless he is a resident in a constituency.

NOTE.—To satisfy this requirement it is enough if a person owns a family dwelling house or a share in a family dwelling house in a constituency and that the house has not during 12 months preceding the prescribed date been let on rent either in whole or in part.

Subject to the residential qualification the other qualifications entitling a person to be an elector for the Punjab Legislative Assembly are :—

If during the previous financial year he was (1) assessed to income-tax or to any direct Municipal or direct cantonment tax of not less than Rs. 50 ; or (2)

assessed to haisiyat or profession tax to an amount of not less than Rs. 2 or in districts in which no such tax exists to any other direct tax imposed under the Punjab District Boards Act to an amount of not less than Rs. 2.

Qualifications dependent on property.—The qualifications dependent on property may be summarised as follows:—Owner of land in the province assessed to land revenue at not less than Rs. 5 per annum; or tenant with occupancy rights as defined in Chapter II of Punjab Tenancy Act, 1887 of land in the province assessed to land revenue of not less than Rs. 5 per annum; or assignee of land revenue in the province of not less than Rs. 10 per annum; or tenant of irrigated land of not less than 6 acres in the province or of un-irrigated land of not less than 12 acres in the province; or owner throughout the 12 months preceding the prescribed date of immoveable property of the value of not less than Rs. 2,000 or of the annual rental value of not less than Rs. 60 not being land assessed to land revenue; or occupier as tenant throughout the 12 months preceding the prescribed date in the constituency of immoveable property of an annual rental value of not less than Rs. 60 not being land assessed to land revenue; or if he is a Zaildar, Inamdar, Sufedposh or Lambardar in the constituency.

Educational qualification.—If a person is proved to have attained the primary or an equivalent or higher educational standard; or if a person is a retired, pensioned or discharged officer, non-commissioned officer or soldier in His Majesty's regular military forces.

Additional qualifications for women electors.—Besides the above qualifications a woman is entitled to

be an elector for the Punjab Legislative Assembly if she is a pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer, or soldier of His Majesty's regular military forces; or if she is in the prescribed manner literate; or if her husband possesses any of the following qualifications.

Husband's qualifications entitling a woman to be an elector.—(i) Being assessed to income-tax or payment of direct municipal or cantonment tax to an amount of not less than Rs. 50 in the previous financial year; or (ii) being a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces; or (iii) being the owner throughout the 12 months preceding the prescribed date of immovable property of the value of not less than Rs. 4,000 in the province or of an annual rental value of not less than Rs. 96 not being land assessed to land revenue; or (iv) having occupied as tenant of immovable property throughout a period of 12 months preceding a prescribed date in the constituency of an annual rental value of not less than Rs. 96 not being land assessed to land revenue; or (v) being the owner of land in the province assessed to land revenue at not less than Rs. 25 per annum; or (vi) being the assignee of land revenue in the province amounting to not less than Rs. 50 per annum; or (vii) being a tenant or lessee under the terms of a lease for a period of not less than 3 years of crown land in the constituency for which an annual rent of not less than Rs. 25 is payable; or (viii) being a tenant with a right of occupancy as defined in Chapter II of the Punjab Tenancy Act, 1887 in respect of land assessed to land revenue of not less than Rs. 25 per annum.

Special qualification for Scheduled caste electors.—

A person who is a member of the Scheduled castes will also be qualified to be an elector (1) If he is shown to be literate as prescribed ; or (2) If he has throughout the 12 months preceding the prescribed date owned immovable property of a value of not less than Rs. 50 not being land assessed to land revenue or has throughout that period owned malba of a house in the province of not less than that value ; or (3) If he has throughout the 12 months preceding the prescribed date occupied as tenant immovable property in the constituency of an annual value of not less than Rs. 36.

Commerce and Industry constituencies.—Firms, corporations or Hindu joint families would be entitled to nominate not more than 3 deputies each as their nominees. But only one of the 3 will be entitled to vote. Each nominee must possess the prescribed qualifications.

Landholders' constituency (5 seats).—For inclusion in electoral roll the qualifications required are : (i) residence in the case of Tumandars' constituency in the province and residence in a landholders' constituency ; and (ii) for Tumandars' constituency being a Tumandar recognised by the Government ; or a person performing the duties of a Tumandar ; or (iii) in the case of any other landholders' constituency being the owner of land in the province assessed to land revenue of not less than Rs. 500 per annum ; or being the assignee of land revenue in the province amounting to not less than Rs. 500 per annum.

Labour constituencies (3 seats).—The franchise qualifications are :—(i) residence in the province for a period of not less than 6 months in the year ending on

the prescribed date ; and (ii) *in the case of a Trade Union constituency* ; (a) employment within the province and membership, honorary membership or being an officer of the North Western Railway Union or of a certified Trade Union but not employed wholly or mainly in a clerical, supervisory, recruiting or administrative capacity ; and (b) being not in arrears of subscription in the case of an ordinary member of the Union ; (iii) *in the case of a non-Union labour constituency*, having worked for remuneration at one or more qualifying industrial establishments for not less than 180 days (whether successive or not) on remuneration of not greater than Rs. 300.

University constituency.—The franchise qualifications are : having a place of residence in India and being either ; (i) a member of the Senate of the Punjab University ; or (ii) having been for at least 7 years a graduate of the University and registered as such in the University register throughout the 2 years immediately preceding the prescribed date.

CHAPTER VIII

Election Offences, Inquiries and Penalties

Introductory Note :—In this chapter are dealt with the various offences and corrupt practices, the method of dealing with them, that is to say the inquiries into them on petitions presented, and lastly the penalties and disqualifications they would entail in the event of their being proved. This chapter has therefore been divided into three parts viz. (i) Election offences and Corrupt practices, (ii) Disqualifications and Penalties, (iii) Election Petitions and Inquiries.

Each one of the above will be dealt with below :—

ELECTION OFFENCES AND CORRUPT PRACTICES

Under the Indian Penal Code.—Offences relating to elections are dealt with in Chapter IX-A of the Indian Penal Code. They are Sections 171-A to 171-I and deal with offences such as bribery, undue influence, personation at elections, making false statements in connection with an election, illegal payments in connection with an election and failure to keep election expenses and the punishment for each one of them. These sections are reproduced in Part I of the Election Offences and Inquiries Act, (Act 39 of 1920) which was passed to provide for the punishment of malpractices in connection with elections, and to make provision for the conduct of inquiries. The Penal Code prescribes punishment for those offences in Criminal Courts.

Under the Government of India (Provincial Elections) Corrupt Practices and Election Petitions' Order.—The Government of India (Provincial Elections) Corrupt Practices and Election Petition Order (1936) mentions certain corrupt practices in elections, which if found committed, after an inquiry by the Commissioners, would entail disqualification for membership or for voting at elections as prescribed therein. The penalties that could be inflicted under the Government of India (Provincial Elections) Corrupt Practices and Election Petitions Order, may be in addition to those inflicted under the Penal Code for election offences. As a matter of fact, as we shall see hereafter, in respect of offences under Chapter IX-A of the Indian Penal Code, punishable with imprisonment for a term exceeding six months, the period of disqualification prescribed under the Corrupt Practices and Election Petitions Order (1936) is six years, from the date of conviction of the election offence under the Indian Penal Code.

The corrupt practices mentioned in the Schedules to the Government of India (Provincial Elections Corrupt Practices and Election Petition Order) enumerates them in its first Schedule being Parts 1, 2 and 3 thereof. They are enumerated under three groups, and they entail disqualifications as shown in part 3 of this chapter.

We shall first deal with the election offences under the Indian Penal Code.

Offences relating to elections (Chapter IX-A, Penal Code).—Chapter IX-A of the Indian Penal Code enumerates the offences relating to elections.

Section 171-A. For the purposes of this chapter (a) "Candidate" means a person who has been nomi-

nated as a candidate at any election and includes a person who when an election is in contemplation holds himself out as a prospective candidate thereat ; provided that he is subsequently nominated as a candidate at such election ; (b) electoral right means the right of a person to stand or not to stand as or to withdraw from being a candidate or to vote or refrain from voting at an election.

Section 171-B. (i) Whoever (a) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of regarding any person for having exercised any such right ; or (b) accepts either for himself or for any other person any gratification as a reward for exercising any such right for inducing or attempting to induce any other person to exercise any such right, commits the offence of bribery ; provided that a declaration of public policy or a promise of public action shall not be an offence under this section ; (ii) a person who offers or agrees to give or offers or attempts to procure a gratification shall be deemed to give a gratification ; (iii) a person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification and a person who accepts a gratification as a notice for doing what he does not intend to do or as a reward for doing what he has not done shall be deemed to have accepted the gratification as a reward.

Elections to which Chapter IX-A of the Indian Penal Code applies.—Chapter IX-A containing offences relating to elections has been introduced in the Code by the Indian Election Offences and Inquiries Act, XXXIX of 1920.

Election offences have been made part of the general law of the land both in respect of legislative bodies and public bodies in general. By this enactment the principle of purity of franchise is insisted on in the general criminal law of the country. The offences made punishable under this chapter are: (1) bribery, (2) undue influence, and (3) personation and certain other mal-practices at elections to Legislative and other public bodies.

It must be noted that no one is a candidate before the dissolution or vacancy.¹ In England a person was held to have become a candidate as soon as he announced his intention even 3 years before the actual election.² Under the present definition in the Penal Code there is no room for this latitude in construction. See 171-A.

What is bribery?—Promise of employment,³ the offer to vacate an office in favour of a bribe, amount to bribery.⁴ But an act in order to amount to bribery must be done with a view to influence the election.⁵ The distribution of refreshments,⁶ the hiring of voters' house,⁷ the payment for the exhibition of bills and

¹ Montgomery (1892), 4 O'M & H. 167; Walsall (1892), 4 O'M & H. 123; Stepne (1892), Day's Election Cases, 117; Rochester (1-b) 98; 4 O'M & H. 159.

² Hoggerton (1896), 5 O'M & H. 691.

³ Plymouth (1859) and Waterford (1870), 2 O'M & H. 25.

⁴ *Ibid.*

⁵ Launeston (1874), 2 O'M & H. 129.

⁶ Tynemouth (1853), 2 P.R. & D. 186; Bodwin (1869), 1 O'M & H. 124.

⁷ Huddersfield (1869), W & B.R. 39; Dartmouth (1859), W. & B.R. 21.

posters,¹ are other instances of bribery. In England the payment of money to voter before election is a bribe if it is paid after he has voted unless it is shown to have been done corruptly² that is in fulfilment of a previous promise³ or done what is wrong or with an evil purpose.⁴ Similarly the conferral of office of employment whether temporary or permanent,⁵ the payment of travelling and conveyance expenses is a bribe if made conditionally upon his coming and voting for the payer.⁶ Treating is sometimes defined to be getting at voters through their mouths and through their stomachs supplying them with food and giving them drink (Per Channell, J. in Great Yarmouth 1906 Printed Judgments).

Similarly payment of rates and taxes on behalf of a voter to enable him to get his name registered on the electoral roll would amount to a bribe if the voters were expected to support their paymaster.⁷ Payment of travelling and conveyance expenses made conditionally upon coming and voting for payer would be treated as a bribe though not a bribe purse.⁸ It is not conditional if the payer merely expresses a hope that the payee would

¹ West Minister (1869), 1 O'M & H. 90; Pontefract (1893), Days Election Cases 130.

² Bradford (1869), 1 O'M & H. 36; Limerick (1869), 1 O'M & H. 261.

³ Cooper vs. Slade (1856), L.J. Q.B. 329.

⁴ Bradford (1869), 1 O'M & H. 37; Strond case (1874), 2 O'M & H. 184.

⁵ Nottingham (1843), B & Arn. 105; Penryn (1869), 1 O'M & H. 129.

⁶ Cooper vs. Slade, 6 H.L.C. 746.

⁷ Worcester (1819), C & D. 173; Bridgenorth, 8 L.J.M.C. 86.

⁸ Cooper vs. Slade, 6 H.L.C. 746.

vote for him,¹ but if he says that he would pay his expenses if the voter votes for him it is otherwise.² Excessive payments of travelling expenses³ and payments made to keep away voters from voting,⁴ payment to voter for loss of time⁵ are bribes but not payments of wages by an employer to an employee for time necessary to record his vote if it is done for all alike not with intention of influencing votes.⁶ In England payment of expenses for travelling has been held not bribery provided the expenses were not excessive and payment is not made in return for a promise to vote in favour of the payer.⁷ It is said that such a payment is not intended to induce but only enable him to vote.⁸ In cases where there were two motives, one pure and another corrupt there is no necessity to impute the corrupt motive⁹ as in the case of contributions to charities which were held not to amount to inducement if not unusually excessive, or the assisting a voter in distress, or the distribution of money to the poor who are not voters of a parish the day before the Poll even though the distri-

¹ Bolton (1874), 2 O'M & H. 145.

² Horsham case (1876), 3 O'M & H. 52.

³ Beverley (1869), W & B.R. 188.

⁴ Braudford (1869), 1 O'M & H. 32.

⁵ Simson *vs.* Yeend (1869), L.R. 4 Q.B. 626; Harwick (1848), 1 P.R. & D. 74; Liverpool case (1853), 2 P.R. & D. 248.

⁶ Per Field, J. in Aylesbury (1886), 4 O'M & H. 60.

⁷ Bolton (1874), 2 O'M. H. 145; Salisbury (1880), 3 O'M. & H. 132; Northalverton (1860), 1 O'M & H. 197; Peterborough (1860), W & B.R. 153; Hardshaw (1876). 3 O'M & H. 52; Pontefract (1893). 4 O'M & H. 200; Beverley (1860), W & B.R. 188.

⁸ Ashburton (1859), W & B.R. 5.

⁹ Windsor (1874), 2 O'M & H. 39; Carrickfergus (1896), 5 O'M & H. 95.

bution was shown to have been made in view of election.

But it is a question in each case whether the distribution has been made as an inducement to catch votes or out of a charitable impulse.¹ A post facto conduct shown by distribution of charity 2 years before election to miners and families during a lockout of £ 250 with a request that his name should not be disclosed but afterwards his agent applied for votes on that ground it was held that the same could not convert the gift into a bribe.²

When treating is bribery.—Treating is to be regarded as bribery (1) if it is made in order to influence votes,³ (2) if it has reference to some election,⁴ (3) if it is done to secure popularity with the same object⁵ and (4) if it is done by candidate, agent (or political associations interested in elections of its members⁶) but not a treat by a non-political association to which the rival candidates belong and it could not therefore influence the election or rouse suspicion as to its mover of influencing votes.

Gratification is explained in India by Sec. 171-B which is not restricted to pecuniary gratifications or to

¹ St. George (1896), 5 O'M & H. 95; Boston (1874), 2 O'M & H. 161.

² Lichfield (1895), 5 O'M & H. 27; Higgerton (1896), 5 O'M & H. 74.

³ Tamworth (1869), 1 O'M H. 86.

⁴ Norwich (1886), 4 O'M & H. 91.

⁵ Wallingford (1869), 1 O'M & H. 59; Mallow (1870), 2 O'M & H. 22; Louth (1880), 3 O'M & H. 61.

⁶ St. Georges' (1896), 5 O'M & H. 98; Hexham and Rochester (1892), Day's Election Cases, 14, 104.

gratifications estimable in money. Thus the giving and the accepting of refreshment with the intent required by law is gratification. For instance, the treating of non-electors for them to influence voters¹ or of women for them to influence their father or brothers has been held to be treating.² The corrupt inducement to the voter to vote or refrain from voting may be given at any time although it is generally given at or before the election as for example treating done in July whereas dissolution took place in August.³

In the following cases it was held that there was no treating.—Standing drinks to members of a political club 3 years before election,⁴ the treating with whisky by a sitting member after election a number of people whom he did not know to be voters or not and only two of them were, such people having met him on his leaving the borough to congratulate him.⁵ In this case it was held that the election would not be avoided. Similarly the supplying of refreshments strictly to those engaged in the work of election and known supporters of the sitting member *i.e.*, his committee men in fact was not held to be treating.⁶

An entertainment was given by the respondent in the month of October, 1905, to which all persons in the borough were invited by an advertisement in a local paper and by handbills inviting all friends to meet the

¹ Longford (1870), 2 O'M & H. 15.

² Taneworth (1869), O'M & H. 86.

³ Yonghal (1869), 1 O'M & H. 291; 21 L.T. 316.

⁴ St. Georges' (1896), 5 O'M & H. 100.

⁵ Carrickfergus (1869), 1 O'M & H. 265.

⁶ Bradford (1869), 1 O'M & H. 39.

retiring member and the election took place in January following, there being no corrupt intention the candidate was held not guilty of treating.¹

Where on a polling day refreshments were provided by sitting members' agent and no one partook of it except those who had come with the express object of voting for him there being no previous announcement that such refreshments would be provided nor anything said to voters at the time they got refreshments it was held that the election could not be avoided.²

Cases where it was held to be not bribery.—The payment of large sums to election agents,³ payment to a person to maintain order at the poll,⁴ the employment of a number of clerks, messengers, bill posters, and sandwichmen though many of them voters⁵ and the payment of election expenses to a candidate unless payment was made on considerations which contravene a statute.⁶

Section 171-C. (i) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election ; (ii) Without prejudice to the generality of the provisions of subsection (1) whoever ; (a) threatens any candidate or voter or any person in whom a candidate or voter is interested with injury of any kind ; or (b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is

¹ Great Yarmouth (1906), P.J. 7, 14.

² Carrickfergus (1869), 1 O'M & H. 268.

³ Youghal (1869), 1 O'M & H. 295, 296.

⁴ Gloucester (1873), 2 O'M & H. 25.

⁵ Cambridge Case (1857), W & D. 39.

⁶ Belfast (1869), 1 O'M & H. 285 ; Coventry (1869), 1 O'M & H. 97.

interested will become or will be rendered an object of divine displeasure or of spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter within the meaning of sub-section (1). (iii) A declaration of public policy or a promise of public action or the mere exercise of a legal right without intention to interfere with an electoral right shall not be deemed to be interference within the meaning of this section.

COMMENTARY

Undue influence in elections.—Undue influence is the use of unfair pressure upon a voter exerted by the use of coercion, intimidation or inducement which deprives a person of freedom of judgment. It is only abuse in cases of this where an inducement is held out by a promise to induce voters to vote or not to vote at an election.¹ Undue influence refers to influence exerted upon an individual voter or voters.² It is not necessary that unfair means employed should be effective in converting the voters. All that is necessary is that it should be exerted and that it should be undue.³

Cases where there is no undue influence.—It is open to one to say "I will deal with you not in accordance with the quality of your goods but according to the

¹ Lichfield (1869), 1 O'M & H. 25 (28).

² Cheltenham (1869), 1 O'M & H. 64; Nottingham (1869), ib. 246; North Durham (1874), 2 O'M & H. 156.

³ South Meath (1892), 4 O'M & H. 142; Lay's Election Cases 140; North Norfolk, (1869), 1 O'M & H. 24.

quality of your politics.”¹ An address of influential man to a voter though subtle is not improper as for example a clergy man attending a meeting to select a candidate² and addressing a congregation in favour of a candidate³ or canvassed persons for him⁴ the Court held that his conduct was unobjectionable. While it is an objectionable misrepresentation for a person to send a copy of Ballot paper with a cross mark against his name and saying that they should not put that mark against any other name otherwise the vote would be lost it was not undue influence.⁵ The creation of a riot or other disturbance had not the effect of undue influence unless it was designed and had the effect of deterring voters.⁶ The disturbance should be such as calculated to overawe the electors and men of ordinary nerve and courage would be deterred from proceeding to the poll.⁷ It is not necessary that any voter was in fact deterred from voting although of course if any voter was so deterred it would strengthen the case for the prosecution.⁸

Undue influence at an election is defined as the voluntary interference or attempted interference with

¹ North Durham (1874), 2 O'M & H. 158; North Norfolk (1869), ib. 241.

² Longford (1870), 2 O'M & H. 14.

³ Galway (1869), 1 O'M & H. 307.

⁴ South Meath (1892), Day's Election Cases, 133.

⁵ Stepney (1886), 4 O'M & H. 55; Down (1880), 3 O'M & H. 122.

⁶ Northmeath and East Clare (1892), Day's Election Cases, 144, 164.

⁷ Salford (1869), 1 O'M & H. 245.

⁸ South Meath (1892), 4 O'M & H. 188.

the right of any person to stand or not to stand or withdraw from being a candidate or to vote or refrain from voting. This covers all threats of injury to person or property and all illegal methods of persuasion and any interference with the liberty of the candidates or the persuasion and any interference with the liberty of the candidate or the electors. It is not however interference within the meaning of the clause to make a declaration of public policy or a promise of public action. The extraction of a promise from employees by an employer not to vote at all and the subsequent threat that if they voted for L they would have no further employment from him would avoid election. Similarly where a pastoral denounced the political party to which the petitioners belonged, condemned their principles as unlawful and unholy and threatened with spiritual injury and loss all persons who should vote for them the election was avoided. (Statement of Objects and Reasons G. I. 1920. Part V, Page 135, S. 9.)

Section 171-D. *Personation at election.*—Whoever at an election applies for a voting paper or votes in the name of any other person whether living or dead or in a fictitious name or who having voted once at such election applies at the same election for a voting paper in his own name ; and whoever abets, procures or attempts to procure the voting by any person in any such way commits the offence of personation at an election.

COMMENTARY

In the above section words such as voluntarily, wilfully, or corruptly though not in the section have been

held to qualify the language of the English Act¹ and the same qualification must be read into the language of the section 171-D. Only one corruptly aiding or abetting is intended to be punished² under the above section.

Section 171-E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both; Provided that bribery by treating shall be punished with a fine only.

EXPLANATION:—Treating means that form of bribery, where the gratification consists in food, drink, entertainment or provision.

Section 171-F. *Punishment for undue influence or personation at an election.*—Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both.

Section 171-G. *False statement in connection with an election.*—Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true in relation to the personal character or conduct of any candidate shall be punished with fine.

¹Stepney, 4 O'M & H. 43.

²Hexham (1892), Day's Election Cases, 68; Gloucester (1873), 2 O'M & H. 63; Athlone (1880), 3 O'M & H. 57.

COMMENTARY

Publication of election lies.—Section 171-G of the Indian Penal Code penalises the publication of election lies regarding the personal conduct and character of a candidate as for example by the distribution of leaflets stating that the firm of which plaintiff was a member had locked out their miners for six weeks¹ or by saying of a temperate man that he had drunk wine or that there was dark passage in his life and a skeleton in his cupboard which might be supposed to reflect on character.² Again the statement that a candidate had been guilty of lying, cowardice and bribery supported by instances is an egregious instance of this offence.³ Similarly statements that a candidate was living on the profits of cheap foreigners whom he employed at 9d. a day or that he befriended England's enemies whom he supplied with reliable information and smuggled ammunition⁴ are instances of this offence. But the statement that the opposing candidate only came to the constituency when he wanted votes was held to be a statement as to his character as a public man.⁵ An accused person is entitled to show that he had reasonable grounds for believing and did believe it to be true.⁶

Section 171-H. *Illegal payments in connection with an election.*—Whoever without the general or special

¹ Barley vs. Edmunds (1895), 1 T.L.R. 537.

² Silver vs. Benn (1896), 12 T.L.R. 199.

³ St. Georges' (1896), 5 O'M & H. 104.

⁴ Monmouth (1901), 5 O'M & H. 171.

⁵ Cookermouth (1901), 5 O'M & H. 158.

⁶ Sunderland (1896), 5 O'M & H. 64, 65.

authority in writing of a candidate incurs or authorizes expenses on account of the holding of any public meeting or upon any advertisement, circular or publication or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate shall be punished with fine which may extend to five hundred rupees :

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate he shall be deemed to have incurred such expenses with the authority of the candidate.

COMMENTARY

Illegal payments in connection with an election.—Section 171-H. This offence is dealt with under section 171-H, of the Indian Penal Code. Under the English Law certain payments are regarded as illegal i.e., the use of a committee room in a house where intoxicating liquor or refreshments of any kind, is supplied or sold to members of a club, society or association other than a permanent political club or in an elementary school etc., such as those mentioned in Corrupt etc., Prevention Act, 1854.

Section 171-I. Failure to keep election accounts.—Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.

COMMENTARY

Failure to keep election expenses.—Section 171-I. Expenses relate to candidature of a person which only begins on the dissolution or vacancy. It was so held in England.¹ Election expenses are all the expenses necessary for or incidental to an election whether incurred by a candidate himself or by his election agent, canvassers, committee men, political associations, societies, clubs and other bodies whether corporate or incorporate.² Where a candidate had built a room at the back of his house for the purpose of a political club and used it as a committee room it was held that a proportionate part of the rent and the money paid for cleaning, coal and gas were election expenses.³ Expenses which a prospective candidate incurs while nursing his constituency to make himself acceptable to his constituents being too remote are not comprised in the term. Expenses incurred in starting a news paper, 3 months before election, to advocate his own political views were held not election expenses being expenses incurred to popularise candidates' political views.⁴ So was the subsidy paid to a news paper for the same purpose⁵.

¹ Walsall (1892), 4 O'M & H. 123; Rochester (1892), 4 O'M & H. 159; Montgomery (1892), 4 O'M & H. 167; Stepney (1892), Day's Election Cases.

² Elgin (1895), 5 O'M & H. 7; Lichfield (1895), 5 O'M & H. 36; Lancaster (1896), 5 O'M & H. 40; Cockermouth (1901), 5 O'M H. 156.

³ St. Georges (1896), 5 O'M & H. 115.

⁴ Kennington (1886), 4 O'M & H. 93.

⁵ Lichfield (1895), 5 O'M & H. 33.

Expenses incurred in improving the electoral roll in the interest of the constituency were excluded.¹

Election Offences and Corrupt Practices

Under the Government of India (Provincial Elections) Corrupt Practices and Election Petitions' Order.—

The following are the corrupt practices mentioned in the first schedule to the Government of India (Provincial Elections) Corrupt Practices and Election Petitions' Order.

Part I of the first schedule to the order contains the following :—

(1) *Bribery* that is to say any gift, offer or promise by a candidate or his agent or by any other person with the connivance of a candidate or his agent of any gratification to any person whomsoever with the object directly or indirectly of inducing : (a) a person to stand or not to stand as or to withdraw from being a candidate at an election ; or (b) an elector to vote or refrain from voting at an election or as a reward to, (i) a person for having so stood or not stood or for having withdrawn his candidature ; or (ii) an elector for having voted or refrained from voting.

For the purposes of this paragraph the term “ gratification ” is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward ; but it does not include the payment of any expenses bona fide incurred at or for the purpose of any

¹ Kennington (1886), 4 O'M & H. 93.

election and duly entered in the return of election expenses prescribed by this order.

(2) *Undue influence* that is to say any direct or indirect interference or attempt to interfere on the part of a candidate or his agent or of any other person with the connivance of the candidate or his agent with the free exercise of any electoral right.

Provided that (a) without prejudice to the generality of the provisions of this paragraph any such person as is referred to therein who (i) threatens any candidate or elector or any person in whom a candidate or elector is interested with any injury of any kind; or (ii) induces or attempts to induce a candidate or elector to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure shall be deemed to interfere with the free exercise of the electoral right of that candidate or elector within the meaning of this paragraph, (b) a declaration of public policy or a promise of public action or the mere exercise of a legal right without intent to interfere with an electoral right shall not be deemed to be interference within the meaning of this paragraph.

(3) *The procuring or abetting or attempting to procure by a candidate or his agent or by any other person with the connivance of a candidate or his agent the application by a person for voting paper in the name of any other person whether living or dead or in a fictitious name or by a person for a voting paper in his own name when by reason of the fact that he has already voted in the same or some other constituency he is not entitled to vote.*

(4) *The removal of a voting paper from the polling station during polling hours by any person with the connivance of a candidate or his agent.*

(5) *The publication by a candidate or his agent or by any other person with the connivance of the candidate or his agent of any statement of fact which is false and which he either believes to be false or does not believe to be true in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate being a statement reasonably calculated to prejudice the prospect of that candidate's election.*

(6) *The incurring or authorising by a candidate or his agent of expenditure or the employment of any person by a candidate or his agent in contravention of this order or of any act of the provincial legislature or rules.*

Part II of the first Schedule contains the following:—

(1) Any act specified in part I of this Schedule when done by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent.

(2) The application by a person at an election for a voting paper in the name of any other person whether living or dead or in a fictitious name or for a voting paper in his own name when by reason of the fact that he has already voted in the same or some other constituency he is not entitled to vote.

(3) The receipt of or agreement to receive any gratification whether as a motive or a reward (a) by a

person for standing or not standing as or for withdrawing from being a candidate ; or (b) by any person whomsoever for himself or any other person for voting or refraining from voting or for inducing or attempting to induce any elector to vote or refrain from voting or any candidate to withdraw his candidature.

For the purpose of this paragraph the term " gratification " has the same meaning as it has for the purposes of paragraph one of part I of this Schedule.

(4) The making of any return of election expenses which is false in any material particular or the making of a declaration verifying any such return.

Part III of the first Schedule to the order contains the following :—

(1) The incurring or authorising by any person other than a candidate or his agent of expenses on account of holding any public meeting or upon any advertisement, circular or publication or in any other way whatsoever for the purpose of promoting or procuring the election of the candidate unless he is authorised in writing so to do by the candidate.

(2) The hiring, using or letting as a committee room or for the purpose of any meeting to which electors are admitted of any building room or other place where intoxicating liquor is sold to the public.

(3) The issuing of any circular, placard or poster having a reference to the election which does not bear on its face the name and address of the printer and publisher thereof.

NOTE:—As to the disqualifications which, acts enumerated above would entail, see Part 3 of this Chapter.

Part II, Disqualifications and Penalties : (A) Under Penal Code.—Having enumerated the election offences in Part I of this Chapter above we shall now refer to the disqualifications which those would entail. No person, it should be noted, is competent to fill a seat in any legislature if he is disqualified to do so. The disqualifications are specified below. These disqualifications are in addition to the substantive punishments for the commission of offences under Chapter IX-A of the Indian Penal Code. In Part I-A the punishment for each of the offences under the Indian Penal Code, is mentioned. By Section 171-E, the offence of bribery, is made punishable with imprisonment of either description for a term which may extend to one year or with fine or with both. By section 171-F, the offence of undue influence or personation is made punishable with imprisonment for a term which may extend to one year or with fine or with both. Section 171-G punishes the offence of making or publishing false statements in connection with an election with fine. Section 171-H punishes the making of illegal payments in connection with an election with fine which may extend to Rs. 500 and Section 171-I punishes the failure to keep election expenses which may extend to Rs. 500.

(B) Under (Provincial Elections) Corrupt Practices Order.—Besides the above, the corrupt and illegal practices in elections enumerated in Part IV of the Government of India (Provincial Elections) Corrupt Practices and Election Petitions Order, 1936, and in the Schedule

thereto annexed (which are reproduced in Part I-B of this chapter above) entail disqualification for membership or for voting at elections.

A candidate or elector may be disqualified (i) for 6 years, (ii) for 5 years, or (iii) for 4 years.

(i) Commission of offences or corrupt practices entailing disqualification for 6 years ; (ii) The acts entailing disqualification for 5 years ; (iii) The commission of corrupt practices entailing disqualification for 4 years.

(i) *Offences or corrupt practices entailing disqualification for 6 years.*—(a) Offences under Chap. IX-A of the Indian Penal Code punishable with imprisonment for a term exceeding 6 months which are committed in connection with an election to a provincial legislature in Coorg Legislative Council or a Local Body in British India. The same are as follows :—(b) Corrupt practices of which persons are reported guilty under Part III of the Government of India (Provincial Elections) Corrupt Practices and Election Petitions' Order 1936 as specified in Part 1 and 2 of the first Schedule to the said Order which are enumerated in Part I of this chapter above.

(ii) *Acts entailing disqualification for voting for 5 years.*—Para 5 of Part IV of the same order which mentions acts which would entail disqualification for voting at any election for a period of 5 years is to the following effect :—

“ If default is made in the return of the election expenses of any person who has been nominated as a candidate at an election to which Part II of this order

applies (part II refers to provisions referring to election agents and expenses which are above dealt with) or if such a return is found either by Commissioners holding an inquiry into the election or by any Court in a judicial proceeding to be false in any material particular the candidate and his election agent shall be disqualified for voting at an election for a period of 5 years from the date by which a return was required to be lodged."

According to the above provision (i) failure to file a return of election expenses ; or (ii) the filing of false returns entail disqualification for voting at elections for a period of 5 years from the date by which a return is required to be lodged.

(iii) *Corrupt practices entailing disqualification for 4 years.*—Para 3, Part IV of the same order refers to corrupt practices practised in relation to any election other than an election by the members of a Provincial Legislative Assembly to fill seats in the Provincial Legislative Council the commission of which entail disqualification for voting at any election for 4 years from the date of the report of the Commissioners appointed to inquire into an election petition.

The following table taken from the second Schedule of the Government of India (Provincial) Elections Corrupt Practices and Election Petitions' Order will show the disqualifications for membership, that would follow in the event of the corrupt practices mentioned therein being proved to the satisfaction of the Commissioners appointed to inquire into them :—

Second Schedule

Disqualifications for Membership of Provincial Legislature

ELECTIONS	OFFENCE OR CORRUPT PRACTICE	PERIOD OF DISQUALIFICATION
Elections to which Chapter IX-A of the Indian Penal Code applies.	Offences under Chapter IX of the Indian Penal Code punishable with imprisonment for a term exceeding six months.	Six years from the date of conviction.
Elections as defined in the paragraph 3 of part 1 of this order.	Corrupt practice specified in parts I and II of the First Schedule to this order.	Six years from the date of the report of the tribunal holding the inquiry.
Elections as defined in paragraph 3 of part 1 of this order other than elections by the members of a Provincial Legislative Assembly to fill seats in the Provincial Legislative Council.	Corrupt practices specified in part III of the first Schedule to this order.	Four years from the date of the report of the tribunal holding the inquiry.
Elections to Federal legislature	Corrupt practices as defined in any order under the Act relating to such elections.	The period for which the corrupt practice entails disqualification for membership of Federal legislature.
Elections under the Government of India Act.	Any corrupt practice within the meaning of the Electoral Rules under the Government of India Act relating to the election in question.	Such period commencing on the date of the report of the Commissioners under the electoral rules relating to the election in question as is the maximum period of disqualification specified in those rules for inclusion in electoral rolls thereunder.

Disqualification for a firm, Hindu joint family or corporation from nominating persons for inclusion in electoral roll.—Para 4 of Part IV of the same order says that “Where under either of the two last preceding paragraphs i.e., a person is convicted of an offence under Chapter IX-A of the Indian Penal Code punishable with imprisonment for a term exceeding 6 months or held guilty after inquiry of corrupt practices enumerated in the order entailing disqualification for voting for 6 or 4 years as shown above in connection with an election in a commerce and industry mining or planting constituency then, if that person was at the date of the election either ; (a) included in the electoral roll for the constituency as the nominee of a firm, Hindu joint family or corporation entitled to nominate persons for inclusion therein ; or (b) a member of any such firm or Hindu joint family or a Director, Managing Agent, or Manager of any such corporation or a person authorised to sign a name of any such firm, Hindu joint family or corporation in the ordinary course of its business, the firm, family, or corporation shall for the like period be disqualified from nominating persons for inclusion in the electoral roll of any commerce and industry, mining or planting constituency.”

According to the above section if a person is found guilty of corrupt practices or election offences of the kind mentioned therein in connection with an election in the commerce and industry, mining, or planting constituency and disqualified for voting, in case he is either nominated by a firm or Hindu joint family or corporation for inclusion in electoral roll or he is a member of any such firm or Hindu joint family or a Director,

Managing Agent or Manager of any such corporation or a person authorised to sign the name of any such firm, Hindu joint family or corporation in the ordinary course of its business, the firm, family or corporation will be disqualified for the same period from nominating persons for inclusion in electoral roll of any commerce and industry, mining or planting constituency.

Disqualified person whether can be election agent.—A person disqualified under the above provisions is equally disqualified for being an election agent according to para 7 of Part IV of the same order which is as follows :—

Any person who is for the time being disqualified under the foregoing provisions of this part of this order for being a member of a provincial legislature or for voting at elections shall so long as the disqualification exists also be disqualified for being an election agent at any election.

Removal of disqualifications.—Para 8 of Part IV of the Government of India (Provincial Elections) Corrupt Practices and Election Petitions Order 1936 prescribes the circumstances under which the disqualifications which arise as pointed out above can be removed. The said paragraph is to the following effect :—

Any disqualification under paragraphs 2 to 5 of this part of this order arising in connection with the legislature of or to a local body in a province may be removed by the Governor of that province in his discretion and any other disqualification under the said paragraph 2 may be removed before the establishment of the Federation by the Governor-General in Council and

after the establishment of the Federation by the Governor-General in his discretion.

Part III

Election Petitions and Inquiries.—We have noticed the substantive provisions dealing with election offences, and corrupt practices. In this part the procedural aspect of the same is dealt with below. Enquiries into election offences and corrupt practices can only be initiated, (i) after obtaining sanction to prosecute in respect of offences of bribery, undue influence, personation at elections etc., as provided in section 196 of the Code of Criminal Procedure in the case of offences specified in Chapter IX-A of the Indian Penal Code; or (ii) in the case of doubts and disputes as to elections by a petition as provided in the Government of India (Provincial Elections) Corrupt Practices and Election Petitions' Order 1936 or in the Election Offences and Inquiries Act being Act 39 of 1920.

Sanction to prosecute in respect of offences of bribery, undue influence, personation etc. at Elections.—No prosecution can be instituted for the offences of bribery, undue influence or personation at an election, false statement in connection with an election, and illegal payment in connection with an election under Sections 171-E, 171-F, 171-G, 171-H, 171-I of the Indian Penal Code without the sanction of the Government as provided in Section 196 of the Criminal Procedure Code as amended by the Election Offences and Inquiries Act, XXXIX of 1920, Section 3. These offences are non-cognisable and summons issue at the first instance. They are bailable and not compoundable, and they are

triable by a Presidency Magistrate or a Magistrate of the first class.

The enactments that regulate the procedure into disputed elections are (1) The Election Offence and Inquiries Act (Act 39 of 1920); and (2) The Government of India (Provincial Elections) Corrupt Practices and Election Petitions Order 1936.

The provisions of the Government of India (Provincial Elections) Corrupt Practices and Election Petitions Order 1936 are as follows :—

PROCEDURE OUTLINED IN THE GOVERNMENT OF INDIA
(PROVINCIAL ELECTIONS) CORRUPT PRACTICES AND
ELECTION PETITIONS ORDER 1936

Inquiry into corrupt practices in elections.—The Government of India (Provincial Elections) Corrupt Practices and Election Petitions Order 1936, Part 3, deals with the procedure to be followed in the matter of doubts and disputes as to the validity of elections. The same order also enumerates the disqualifications that would follow in the event of a candidate for any provincial elections being proved to have been guilty of corrupt practices in elections. The persons concerned in these corrupt practices would naturally be candidates and their agents. The same order provides that the following words will have to be interpreted as follows :—

Agent includes an election agent and any person who on the trial of an election petition is held by the Commissioners to have acted as an agent with the knowledge or consent of the candidate.

Candidate, means a person who has been, or claims to have been duly nominated as a candidate at any election, and a candidate who with the election in prospect has held himself out as a prospective candidate shall be deemed to have been a candidate as from the time when he began so to hold himself out.

“*Electoral right*,” means the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting at an election.

“*Returned candidate*,” means a candidate whose name has been published in the prescribed manner as duly elected.

“*Corrupt practice*,” in relation to an election by the members of a Provincial Legislative Assembly to fill seats in the Provincial Legislative Council means one of the practices specified in Parts I and II of the First Schedule to this Order and in relation to any other election, means one of the practices specified in Parts I, II, and of that Schedule.

Elections how called in question.—No election shall be called into question except by an election petition presented in accordance with the provisions of this part of the Order (para 2).

Who could present an election petition.—“An election petition against any returned candidate may be presented to the Governor; (i) by any candidate or elector on any ground; (ii) by an officer empowered in that behalf by the Governor exercising his individual judgment on the ground that the election has not been a free election by reason of the large number of cases

in which undue influence or bribery has been exercised or committed.

In this paragraph 'Elector' in relation to commerce and industry, mining or planting constituency includes all the persons included in the electoral roll as the nominees of any body not withstanding that only one of them is entitled to vote."

Para 3. (i) Relief in an election petition.—Besides calling in question the election of a returned candidate, a person can claim a declaration that he himself has been duly elected. This can only be done on the ground that the petitioning candidate in fact received a majority of valid votes or on the ground that but for the returned candidate having obtained votes by corrupt practices, he himself would have obtained a majority of the voted votes.

Commissioners to try election petition.—The election petition will be heard by 3 persons appointed by the Governor unless the petition is summarily dismissed by him for non-compliance with the prescribed requirements. Those 3 persons will be those who are, or have been or are eligible to be appointed Judges of a High Court. One of them will be the president. They are to conduct all proceedings in connection with the hearing of the election petition. Even if more than one petition is presented in respect of an election, the same Commissioners may be required to inquire into them either separately or in one or more groups. In case after appointment, one of the Commissioners is not available, the Governor will appoint a Commissioner in place of the Commissioner whose services are not available. On such appointment the proceedings will commence-

afresh. But the Commissioners may direct that any evidence recorded before the appointment, may remain on record. In that case, it will not be necessary for them to re-examine those witnesses already examined and discharged. (para 4.)

Procedure to be followed by the Commissioners.—The Commissioners may order the Advocate-General of the Province or some one acting under his instructions to take such part in the inquiry as they may direct. Subject to the provisions of the Government of India (Provincial Elections) Corrupt Practices and Election Petitions Order, 1936, the Local Governments are empowered to make rules regulating (i) the form of election petitions, (ii) the time and manner of their presentation, (iii) the persons who are to be made parties thereto, (iv) the procedure to be adopted in connection therewith, (v) the circumstances in which petitions are to abate or may be withdrawn and in which new petitions may be substituted, (vi) the security that should be given for costs, (vii) the circumstances under which the Governor, exercising his individual judgment, may dismiss petitions for non-compliance with the prescribed requirements.

Accordingly special rules are framed in every province which deal with the above matters. A summary of those local rules is given in Chapter V.

When election of a candidate becomes void.—The election of a candidate becomes void as per para 7, sub-para (1), Part III of the same order.

“If in the opinion of the Commissioners:—(a) the election of a returned candidate has been procured or

induced, or the result of the election has been materially affected, by any corrupt practice; or (b) any corrupt practice specified in Part I of the first Schedule to this order has been committed in the interests of a returned candidate; or (c) the result of the election has been materially affected by the improper acceptance or rejection of nomination or by reason of the fact that any person nominated was not qualified, or was disqualified for election or by the improper reception or refusal of a vote or by the reception of any vote which is void, or by any non-compliance with the provisions of the Act or of this order, or of any Act of the Provincial Legislature or Rules relating to the election, or by any mistake in the use of any prescribed form; or (d) the election has not been a free election by reason of the large number of cases in which bribery or undue influence has been exercised or committed."

When an election is not to be held void.—Sub-para 2 of para 7, Part III of the same order mentions the circumstances under which the Commissioners may find an election as not void, and the same is as follows:—

"If the Commissioners report that a returned candidate has been guilty by an agent other than his election agent of any corrupt practice specified in Part I of the first Schedule to the order, but further report that the candidate has satisfied them that; (a) no corrupt practice was committed at the election by the candidate or his election agent and the corrupt practices mentioned in the report were committed contrary to the orders and without the sanction or connivance of the candidate or his election agent; (b) the candidate and his election agent took all reasonable means for preventing the

commission of corrupt practices at the election ; (c) the corrupt practices mentioned in the report were of the trivial and limited character and took the form of customary hospitality which did not affect the result of the election ; and (d) in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents."

Voting more than once at same election void.—Sub-para 3 of the same para says that "*If a person (not being entitled so to do) votes more than once at the same election, all his votes shall be deemed for the purposes of this paragraph to be void.*"

REPORT OF THE COMMISSIONERS

Para 8, Part III of the same order says that after the completion of the inquiry, the Commissioners have to report whether the returned candidate or any person who has lodged a petition and claimed a seat has been duly elected, and in so reporting will have regard to the above provisions as to the commission of corrupt practices in the election dealing with para 7 above mentioned.

The report will further include a recommendation by the Commissioners as to the total amount of costs which are payable and the persons by and to whom the cost should be paid, and any such recommendation may include a recommendation for payment of costs to the Advocate-General of the province or a person acting under his instructions attending the trial in pursuance of the order of the Commissioners (Sub-Para 2 of Para 9). The report will have to be signed by all the Commissioners and the same sent forthwith to the Governor.

Difference of opinion among Commissioners.—In case of difference of opinion among the Commissioners the majority view will prevail, and the report will be expressed in terms of the view of the majority as provided in para 9 of the same order.

Report and recommendations of the Commissioners after inquiry.—Para 10 of Part III of the Government of India (Provincial Elections) Corrupt Practices and Election Petitions Order 1936 prescribes what the report has to contain where an election petition contains a charge of any corrupt practice. The same is to the following effect.

“Where any charge is made in an election petition of any corrupt practice, the Commissioners shall record in their report:—
(a) a finding whether a corrupt practice has or has not been proved to have been committed by any candidate or his agent or with the connivance of any candidate or his agent and the nature of that corrupt practice; and (b) the names of all persons if any who have been proved at the inquiry to have been guilty of any corrupt practice and the nature of that practice with any such recommendations as the Commissioners may think proper to make for the exemption of any persons from any disqualifications which they may have incurred in this connection under paragraphs 2 to 5 of Part IV of this order.

Provided that no person shall be so named in the report unless he has been given

reasonable opportunity of showing cause why his name should not be so recorded."

The report will have to be signed by all the Commissioners and the same sent forthwith to the Governor. On receipt of the report the Governor issues orders in accordance with the Report and publishes it in the Provincial Government Gazette (Sub-Para 3 Para 9). The orders of the Governor on the Report of the Commissioners will be final.

Election Inquiries

Procedure Outlined in the Election Offences and Inquiries Act (Act 39 of 1920).—This Act has been passed to provide for the punishment of malpractices in connection with elections and to make provision for the conduct of inquiries in regard to disputed elections to legislative bodies constituted under the Government of India Act.

Part I of this Act consists of sections of the Indian Penal Code in Chapter IX-A of the Indian Penal Code which are reproduced in Part I of this Chapter above.

In Schedule II to the Criminal Procedure Code after entries relating to Chapter IX of the Indian Penal Code the following has been added.

OFFENCES RELATING TO ELECTIONS

In the matter of Sections 171-E to 171-I of the Indian Penal Code which are reproduced in Part I of the Election Offences and Inquiries Act, it is provided that the Police shall not arrest without warrant. Sum-

mons would ordinarily issue with regard to these offences. They are all bailable and not compoundable. They are triable by a Presidency Magistrate or a Magistrate of the First Class. The punishment prescribed for these offences is specified in the Sections of the Indian Penal Code from Sections 171-E to 171-I.

PART II—ELECTION INQUIRIES AND OTHER MATTERS

SECTIONS 4 TO 14

(4) *Definitions.*—In this part unless there is anything repugnant in the subject or context ; (a) “costs” means all costs, charges and expenses of or incidental to an inquiry ; (b) “election” means an election to either chamber of the Indian legislature or to a Legislative Council constituted under the Government of India Act ; (c) “Inquiry” means an inquiry in respect of an election by Commissioners appointed for the purpose by the Governor-General, Governor or Lieutenant Governor ; (d) “Pleader” means any person entitled to appear and plead for another in a Civil Court and includes an advocate, a vakil and an attorney of a High Court.

(5) *Powers of the Commissioners.*—Commissioners appointed to hold an inquiry shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters : (a) discovery and inspection ; (b) enforcing the attendance of witnesses and requiring the deposit of their expenses ; (c) compelling the production of documents ; (d) examining witnesses on oath ; (e) granting adjournments ; (f) reception of evidence taken on affidavit and (g) issuing commissions

for the examination of witnesses and may summon and examine *suo motu* any person whose evidence appears to them to be material and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure 1898.

EXPLANATION :—For the purposes of enforcing the attendance of witnesses the local limits of the Commissioners' jurisdiction shall be the limits of the province in which the election was held.

(6) *Evidence Act to apply to inquiries before Commissioners.*—The provisions of the Indian Evidence Act, 1872, shall, subject to the provisions of this Act, be deemed to apply in all respects to an inquiry.

(7) *Documentary evidence.*—Notwithstanding anything in an enactment to the contrary no document shall be inadmissible in evidence on the ground that it is not duly stamped or registered.

(8) *Obligation of witness to answer on certificate on indemnity.*—(1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in an inquiry upon the ground that the answer to such question will criminate or may tend directly or indirectly to criminate him; or that it will expose to tend directly or indirectly to expose him to a penalty or forfeiture of any kind: Provided that (i) no person who has voted at an election shall be required to state for whom he has voted; and (ii) a witness who in the opinion of the Commissioners has answered truly all questions which he has been required by them to answer shall be entitled to receive a certificate of indemnity and such certificate may be pleaded

by such person in any court and shall be deemed to be a full and complete defence to or upon any charge under Chapter IX-A, of the Indian Penal Code arising out of the matter to which such certificate relates nor shall any such answer be admissible in evidence against him in any suit or other proceeding. (2) Nothing in sub-section (1) shall be deemed to relieve a person receiving a certificate of indemnity from any disqualification in connection with an election imposed by any law or any rule having the force of law.

(9) *Appearance by pleader.*—Any appearance, application or act before the Commissioners may be made or done by the party in person or by a pleader duly appointed to act on his behalf; provided that any such appearance shall if the Commissioners so direct be made by the party in person.

(10) *Expenses of witnesses.*—The reasonable expenses incurred by any person in attending to give evidence may be allowed by the Commissioners to such person and shall unless the Commissioners otherwise direct be deemed to be part of the costs.

(11) *Costs and Pleaders' fees.*—(1) Costs shall be in the discretion of the Commissioners and the Commissioners shall have full power to determine by and to whom and to what extent such costs are to be paid and to include in their report all necessary recommendations for the purposes aforesaid. The Commissioners may allow interest on costs at a rate not exceeding six per cent per annum and such interest shall be added to the costs. (2) The fees payable by a party in respect of fees of his adversary's pleader shall be such fees as the Commissioners may allow.

(12) *Execution of orders as to costs.*—Any order made by the Governor-General or Governor or Lieutenant-Governor on the report of the Commissioners regarding the costs of the inquiry may be produced before the Principal Civil Court of Original Jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business or where such place is within the local limits of the Ordinary Original Civil Jurisdiction of a chartered High Court before the Court of Small Causes having jurisdiction there and such court shall execute such order or cause it to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

(13) *Disqualification of persons found guilty of election offences.*—Any person who has been convicted of an offence under Section 171-E, or 171-F, of the Indian Penal Code or has been disqualified from exercising any electoral right for a period of not less than five years on account of malpractices in connection with an election shall be disqualified for five years from the date of such conviction or disqualification from

- (a) being appointed or acting in any judicial office;
- (b) being elected to any office of any local authority when the appointment to such office is by election or holding or exercising any such office to which no salary is attached;
- (c) being elected or sitting or voting as a member of any local authority; or
- (d) being appointed or acting as a trustee of a public trust: provided that the Governor-General in the case of an election to the Council of State or the Legislative Assembly and the

Governor or the Lieutenant-Governor in the case of an election to his Legislative Council may exempt any such person from such disqualification.

(14) *Maintenance of secrecy of voting.*—(1) Every officer, clerk, agent or other person who performs any duties in connection with the recording or counting of votes at an election shall maintain and aid in maintaining the secrecy of the voting and shall not (except for some purpose authorized by or under any law) communicate to any person any information calculated to violate such secrecy; (2) Any person who wilfully acts in contravention of the provisions of this section shall be punished with imprisonment of either description for a term not exceeding three months or with fine or with both.

CHAPTER IX

Electoral rights of Joint Hindu families, Joint families and Joint property holders

In the case of joint Hindu families, joint families and joint property holders, a question would naturally arise as to who should be an elector, or in other words, where property is held jointly and where assessments are made jointly on them, who should be included in the electoral roll of a territorial constituency? The Government of India Act, 1935, provides that the following persons would be entitled to be electors in such cases:—(1) The Manager in the case of a Joint Hindu family; or (2) The member authorised in the case of any other joint family holding the property or making payments; or (3) The person authorised in that behalf by a majority of the persons by or on whom the property is held or the payments or assessments are made in the case of Bombay, Madras, Bengal, Bihar, Assam, C. P. and Orissa Provinces; or (4) In the case of registered joint holders one of the registered joint holders in the Madras Presidency.

The above rule obtains in the case of joint tenancy in U. P. In that case the joint tenancy will be adopted as a unit. In the Punjab, N. W. F. P. a joint family will be adopted as a unit for deciding whether the requisite qualification exists and if it does exist the person qualified will be the manager of the family.

**Franchise rights as regards Co-sharers in the
N. W. F. P. and the Punjab**

In the case of co-sharers in the Punjab if a person is under the age of 21 years and his father is alive his share is deemed to be added to that of the father; and if his father is dead and his eldest surviving brother is a co-sharer, his share will be deemed to be added to the share of that brother.

NOTE.—The above provisions are made in the Government of India Act 1935, and the parts referring to various provinces in Schedule 6; but the Government of India Provincial Legislative Assemblies Order 1936 says in para 10, Part I, that where property is owned, held or occupied or payments are made jointly by or assessments are made jointly on the members of a joint family, the family shall be adopted as a unit for deciding whether any qualification exists and if it does exist the person qualified shall be in the case of Hindu joint family the manager thereof and in the case of any other joint family the member thereof authorised in that behalf by the family.

CHAPTER X

Form of oath or affirmation of Elected Members

By a British Subject.—Every member of a Legislature who is a British Subject should on being elected solemnly swear (or affirm) that he will be faithful and bear true allegiance to His Majesty the King-Emperor of India, his heirs and successors and that he will faithfully discharge the duty upon which he is about to enter.

By a ruler of an Indian State.—A ruler of a State who has become a member of a Legislature is also to solemnly swear or (affirm) that he will be faithful and bear true allegiance in his capacity as Member of the Council or Assembly as the case may be to His Majesty the King Emperor of India, his heirs and successors and that he will faithfully discharge the duty upon which he is about to enter.

By a member of Legislature who is a subject of the Ruler of an Indian State.—A member of a Legislature who is a subject of the Ruler of an Indian State is to solemnly swear (or affirm) that saving the faith and allegiance which he owed to his king, his heirs and successors he will be faithful and bear true allegiance in his capacity as Member of the Council or Assembly to His Majesty the King Emperor of India, his heirs and successors and that he will faithfully discharge the duty upon which he is about to enter.

CHAPTER XI

In this chapter some of the forms prescribed for nomination and for voting are given

NOMINATION PAPER

Name of the constituency (for which the candidate is nominated)

Name of the candidate

Father's name

Husband's name

Age

Address

Community, i.e., (whether Muhammadan, Indian Christian, European, Anglo-Indian or belongs to general community. In case of a constituency in which a seat is reserved for a caste or community state the caste)

Constituency on the electoral roll of which the name of the candidate is included

Number of the candidate in the electoral roll of the constituency in which his name is included

Name of the proposer

Number of the proposer in the electoral roll of the constituency

Signature of the proposer

Name of the seconder

Number of the seconder in the electoral roll of the constituency

Signature of the seconder

DECLARATION BY CANDIDATE

I hereby declare that I agree to this nomination.

Date

Signature of Candidate.

I (a candidate may appoint himself as his Election Agent)
hereby declare that I have appointed.....
.....to be my Election Agent.

Signature of Candidate.

To be filled by Returning Officer or other authorised person

CERTIFICATE OF DELIVERY

Serial No.

This nomination paper was delivered to me at my office at
(date and hour).....

*Returning Officer or other
authorised person.*

CERTIFICATE OF SCRUTINY

I have scrutinized the eligibility of the candidate, the proposer and seconder and find that they are respectively qualified to stand for election, to propose and to second the nomination.

*Returning Officer or other
authorised person.*

**Form of a Ballot paper prescribed for use in the
Madras Presidency**

Counterfoil.				Outerfoil.			
Serial No.	P-3	—	450	Serial No.	P-3	—	450
	G-1	—	9431		G-1	—	9431
	M-2	—	1532		M-2	—	1532
	C H-4	—	500		C H-4	—	500
	C M-3	—	278		C M-3	—	278
	L-5	—	354		L-5	—	354
	W-6	—	874		W-6	—	874
	B	—	55		B	—	55

NOTE :—

- (P) stands for *Primary Election*.
 (G) " " *General Constituencies*.
 (M) " " *Muhammadan Constituencies*.
 (C.H.) " " *Indian Christian Constituencies*.
 (C.M.) " " *Commerce and Industry Constituencies*.
 (L) " " *Labour Constituencies*.
 (W) " " *Women's Constituencies*.
 (B) " " *Backward Areas and Tribes Constituencies*.

Form of a Ballot paper generally prescribed in all provinces in India with slight variations

FORM OF FRONT OF BALLOT PAPER

Counterfoil.	Outerfoil. Front	
Serial No.	Name and symbol of candidate	Cross
Constituency		
Name or number of Polling Station		
Number of Elector in Electoral Roll		
Signature or thumb impression of elector		

NOTE:—It is considered important that the whole of the outerfoil of the Ballot paper should be taken up by the cage containing the names and symbols of candidates and spaces for recording votes.

BACK OF OUTERFOIL

Instructions

(1) Place a cross mark thus X against the name of the candidate for whom you wish to vote.

(2) The mark should be placed against only one candidate.

You may give all your votes to one candidate or distribute them as you please.

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| 2. Basic Reality. | 15. Solipsism and Vedanta. |
| 3. Modes of Pure Consciousness. | 16. Vedanta and Positivism. |
| 4. God and Reality. | 17. The Problem of Perception. |
| 5. Ethics of Vedanta. | 18. Aesthetics and Vedanta. |
| 6. Scepticism and Vedanta. | 19. Some Western Objections. |
| 7. Appearance and Reality. | 20. Vedanta and Greek Speculation. |
| 8. Knowledge and Release. | 21. Modern Thought. |
| 9. Intuition of Pure Consciousness. | 22. Modern Thought=Hegel. |
| 10. Practice and Reflection. | 23. British and American Thought. |
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| 12. Theology and Vedanta. | 25. Conclusion. |
| 13. Maya. | |

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ADDENDA AND CORRIGENDA

Election Rules Special to Madras Presidency : Madras Legislative Assembly.—In general constituencies voting is personal. In European, Anglo Indian, Landholders, University, Madras Planters' Constituencies there is postal voting. (As to the procedure in postal voting, see page 111 under the heading 'University Constituency').

Deposits.—The amount to be deposited on nomination is Rs. 250 in the case of general constituencies and Rs. 50 in the case of primary elections of Scheduled castes, Labour and Backward areas and tribes constituencies. No fresh deposit is required in the case of the Scheduled caste candidates in final elections.

Forfeiture of Deposits.—In primary elections the deposit made is forfeited if the number of votes polled by a candidate is less than $\frac{1}{4}$ of the total number of votes polled by the candidate who has secured the lowest number of votes amongst the successful candidates. After primary elections, in the case of a candidate who has succeeded therein there is no forfeiture after the final election. As regards the deposit of any other candidate in a constituency in which seats are reserved for Scheduled castes there is no forfeiture as regards the same unless he fails to obtain $\frac{1}{8}$ of the total number of votes polled by all candidates. As regards the other candidates for the Madras Legislative Assembly the deposit is forfeited unless a candidate

secures $\frac{1}{8}$ of the total number of votes polled in the case of a constituency returning 1 or 2 members. In the case of a constituency returning more than 2 members $\frac{1}{8}$ of the total number of votes polled divided by the number of members to be elected.

Madras Legislative Council.—The amount to be deposited is Rs. 250 in the case of all candidates contesting elections. The same will be forfeited unless a candidate secures $\frac{1}{8}$ of the total number of votes polled in the case of a constituency returning 1 or 2 members. In the case of a constituency returning more than 2 members, $\frac{1}{8}$ of the total number of votes polled divided by the number of members to be elected.

Voting.—In general constituencies the voting is personal. In the case of the Muhammadan, European and Indian Christian Constituencies postal voting is prescribed.

Election Rules Special to Bombay Province.—In Bombay, in all constituencies except the University Constituency voting is personal in the Provincial Assembly Elections. As regards the University Constituency, voting is by post. (See page 111). In the Bombay Legislative Council Elections, in the matter of the General and Muhammadan Constituencies voting is personal and in the European Constituency voting is by post.

Deposits and their forfeiture.—Deposit made by a candidate for Election to the Bombay Legislative Assembly and the Legislative Council will be forfeited unless

he secures $1/8$ of the total number of votes polled in the case of a constituency returning 1 or 2 members and in the case of a constituency returning more than 2 members unless he secures $1/8$ of the total number of votes polled divided by the number of members to be elected. In the case of Backward tribes deposit made by a candidate will not be forfeited unless the number of votes polled by such a candidate does not exceed $1/2$ of the fraction prescribed in this rule, of the total number of votes polled.

In the case of primary elections to elect candidates for Scheduled castes, deposit made will be forfeited if a candidate fails to secure $1/4$ of the total number of votes secured by the candidate who secured the lowest number of votes amongst the successful candidates.

Procedure as to Postal voting is described on page 111, under the heading 'University Constituency.'

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